

SOLICITATION, OFFER AND AWARD				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1 73			
2. CONTRACT (Proc. Inst. Ident.) NO.			3. SOLICITAION NO. SP0600-00-R-0035		4. TYPE OF SOLICITATION [] SEALED BID (IFB) [x] NEGOTIATED (RFP)		5. DATE ISSUED 24 February 2000		6. REQUISITION/PURCHASE NO. SC0600-99-0401		
7. ISSUED BY CODE Defense Energy Support Center 8725 JOHN J. KINGMAN RD, SUITE 2945 FORT BELVOIR, VA 22060-6222 P.P. 6.2 BUYER/SYMBOL - TRACY/DESC-FPC Phone: (703) 767-9351 FAX: (703) 767-8506 E-mail: ttracy@desc.dla.mil				SCO600		8. ADDRESS OFFER TO (If other than item 7) Attn: Bid Custodian, DESC-CPC, Room3729 Defense Energy Support Center 8725 JOHN J. KINGMAN RD, SUITE 4950 FORT BELVOIR, VA 22060-6222 FAX: (703) 767-8506 Verification: (703) 767-8465					
NOTE: In sealed bid solicitation "offer" and "offeror mean "bid" and "Bidder".											
SOLICITATION											
9. Sealed offers in original and 1 (one) copies for furnishing the supplies or services in the Schedule will be received at the place specified, in the depository located in Room 3729 until 3:00 PM local time 24 March 2000 . (hour) (date) CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L. Provision No. 52.215-10. All offers are subject to all tems and conditions contained in this solicitation.											
10. FOR INFORMATION CALL:		A. NAME TRACY			B. TELEPHONE NO. (Include Area Code) (NO COLLECT CALLS) (703) 767-9351						
11. TABLE OF CONTENTS											
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OFFER (Must be fully completed by offeror)											
NOTE: ITEM 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.											
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offer) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.											
13. DISCOUNT FOR PROMPT PAYMENT (See section I, Clause No 52.232-8) I4 & I5				10 CALENDAR DAYS %		20 CALENDAR DAYS %		30 CALENDAR DAYS %		CALENDAR DAYS %	
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the solicitation for offerors and related documents numbered and dated:				AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	
15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) FAX #					
		BIDDER CODE - CAGE CODE									
15B. TELEPHONE NO. (Include area code)			15C. CHECK IF REMITTANCE ADDRESS [] IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS			17. SIGNATURE			18. OFFER DATE		
AWARD (To be completed by Government)											
19. ACCEPTED AS TO ITEM NUMBERED			20. AMOUNT			21. ACCOUNTING AND APPROPRIATION					
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [] 10 U.S.C. 2304(c)() [] 41 U.S.C. 253(c)()						23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)			ITEM		
24. ADMINISTRATION BY (If other than Item 7) CODE						25. PAYMENT WILL BE MADE BY CODE					
26. NAME OF CONTRACTING OFFICER (Type of print)						27. UNITED STATES OF AMERICA			28. AWARD DATE		

SECTION B SUPPLIES/SERVICES AND PRICES/COST

B34.01 SERVICES TO BE FURNISHED AND PRICES (DFSC FEB 1991)

The services to be furnished during the period 01 May 2000 through 30 April 2005 (five years) and the unit price is as follows:

The Contractor shall provide facilities to receive, store, protect and ship one grade of Government-owned petroleum product (Diesel Fuel DL-2) in the state Washington.

Terms and conditions applicable to the requirement are as follows:

A. AREA OF CONSIDERATION: No further south than Skamokawa, no further east than Elma, and no further north than Copalis Crossing. The west border is the coastline.

B. TANKAGE REQUIRED: Approximately 60,000 gallons (1,428 barrels).

NOTE: Locations smaller than 30,000 gallons (714 Barrels) per site are not acceptable.

C. GRADE OF PRODUCT: Diesel Fuel (DF-2)

D. ESTIMATED THROUGHPUT: Stocks are anticipated to be static. Turnover is expected to occur only due to use or stock rotation requirements.

E. RECEIVING CAPABILITY: Via Government-furnished tank truck as needed on an 8 hour (8:00 a.m. to 4:00 p.m.) per day, 5 days per week basis. Hours in excess will be addressed on an overtime basis.

F. SHIPPING CAPABILITY: Via Government-furnished tank truck as needed on an 8 hour (8:00 a.m. to 4:00 p.m.) per day, 5 days per week basis. Hours in excess will be addressed on an overtime basis.

G. PUMPING CAPABILITY: The pumping capability and flow rate must be compatible with tank truck receiving and shipping requirements for both Government-furnished commercial tank trucks and Government-owned tank trucks. The Contractor shall be capable of loading the first truck within three hours of receiving telephone notification that fuel shipment is required. The Contractor's facility must have the capability to load and ship Government-furnished tank trucks in the event of a power failure, either through the use of a back-up electric power generator or by gravity loading.

H. ANCILLARY FACILITIES: All tanks and facilities must meet the minimum requirements of the current API Standards, NFPA Codes, and all laws, regulations, etc. applicable to tanks and facilities to be provided. The tanks and facilities will consist of a dedicated or **preferably** co-mingled facilities capable of receiving, storing, and shipping one-grade of Government-owned fuel. (An isolated system in lieu of the preferred dedicated system is acceptable provided the requirements of Clause L116.01(d) are met.)

In the absence of any contract provisions or references to a method, specification, or other instruction, the contractor shall perform all services hereunder in accordance with the best commercial practices.

All receipts and shipments shall be made by the Director, Defense Energy Support Center, or his authorized representative. The Contractor shall handle the product received and/or shipped, in a manner which will insure that quality is maintained.

I. DOCUMENT PREPARATION: The Contractor shall be required to provide a semi-annual inventory report reflecting the quantity, quality and type of fuel on hand as of the report date. The semi-annual report shall also contain an update and/or any changes in point of contact or telephone numbers when they occur. In addition to the semi-annual report, the Contractor may be required to provide telephonic inventory reporting.

CONTRACT LINE ITEM 1001 (MUCC): The services and facilities to be provided during the performance of this contract and the prices are as follows:

MULTIYEAR: May 1, 2000 through April 20, 2005.

<u>TANK NO.</u>	<u>TYPE</u>	<u>SHELL CAPACITY BARRELS</u>	<u>FILL CAPACITY BARRELS</u>	Use charge per tank per month (prorated for part months) includes initial fill and final shipment <u>PRICE</u>
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SUBLINE ITEM 1002: Services other than normal working hours (Not to exceed \$1,000.00)

Services shall be ordered for this line item in accordance with Clause G148.05. The overtime rates listed below shall apply, unless altered by union agreement or Government regulations. The Contracting Officer shall be notified by the Contractor of any changes to these rates which shall be supported with copies of the appropriate union agreement or formal Government notice. The rate listed below shall be a "loaded" rate and shall include all payroll taxes, G&A, and profit.

EMPLOYEE CLASSIFICATION

OVERTIME RATE

SECTION C- DESCRIPTION/SPECIFICATIONS

C19.01 SECURITY AND FIRE PROTECTION (DESC AUG 1988)

- (a) The entire facility shall be enclosed by a fence suitable to deter unauthorized access. The fence shall be fitted with gates that may be padlocked when not in use.
- (b) A method of visitor and entrance control will be in effect. A visitor register shall be maintained.
- (c) An internal, self-powered communication system linking all critical points of the facility, capable of serving both as an alarm system and for conduct of terminal operation, will be in use.
- (d) A water supply and fire fighting equipment conforming to National Fire Protection Association and American Petroleum Institute standards will be maintained. At locations outside the United States, other standards may be used with prior approval of the Contracting Officer.
- (e) In the event of an emergency at a CONUS COCO terminal, the Contractor shall seek the assistance of the following as appropriate: local ambulance service; local fire department; local, county, and State police; regional office of the Federal Bureau of Investigation; Secret Service; U.S. Marshal's Service; and the Federal Emergency Management Agency.

C19.04 REMOVAL OF WATER BOTTOMS (DESC FEB 1998)

Storage tanks for DESC use shall be equipped with positive water sumps for removal of all water bottoms. All storage tanks shall be drained of water a minimum of once each week and whenever storage tank gauging indicates water is present. (Weekly water drainage is necessary because the datum plate may not necessarily be the low point in the storage tank. Water could possibly accumulate below the datum plate and not show up in the gauging process.) Additionally, all storage tanks shall be drained of water prior to any transfer of fuel and after a minimum of 4 hours or maximum of 24 hours settling time following each product receipt. Storage tanks equipped with floating roofs shall be gauged for water after each rain and drained if water is found present. Product and water levels shall be gauged before and after the draining of water. Water gauges of each storage tank shall be taken and recorded each time it is gauged for product. (Each storage tank shall be equipped with a fuel/water separation system for collection of all product or water dispensed from its bottom water drain(s). This system shall have the capability to return separated product back into the same storage tank.)

C19.07 TESTING OF PETROLEUM PRODUCTS (DESC AUG 1991)

- (a) The tests identified in attachment 4 of the solicitation are a required part of the services to be provided. The Contractor will provide these tests in the following manner (please mark applicable box):
 - ☐ The Contractor will perform the tests using its own qualified personnel, facilities, and equipment. (All costs for this service are to be included in the monthly service charge.)
 - ☐ The Contractor will not perform the tests with its own personnel, but will provide on a seven days per week, 24 hours per day, basis, all facilities and equipment for testing of product by Government personnel. (All costs for this service are to be included in the monthly service charge.)
 - ☐ The Contractor will not provide its own personnel, facilities, or equipment. Instead, upon the Government's request, the Contractor will transport any sample(s) to a commercial laboratory approved by the Government and arrange for the commercial laboratory to perform all required tests. (The Government will reimburse the Contractor for the actual costs of the tests by the commercial laboratory. All other associated costs are to be included in the monthly service charge.)
- (b) All facilities and equipment to be provided, whether that of a Contractor or commercially-owned, must conform to the standards for such facilities and equipment established by the Occupational Safety and Health Act and implementing regulations and the National Fire Protection Association.

SECTION E – INSPECTION AND ACCEPTANCE**E1.01 CONTRACTOR RESPONSIBILITY FOR GOVERNMENT INSPECTION OF SERVICES (DESC AUG 1981)**

If any inspection or test is made by the Government on the premises of the Contractor or subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties.

(DESC 52.246-9F04)

E5.03 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)

(a) **DEFINITION. Services**, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(FAR 52.246-4)

E18 INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS (DESC AUG 1994)

(a) The Contractor shall maintain and make available upon request the following historical data relative to each storage tank provided:

- (1) Date and type of construction;
- (2) Name of installing contractor;
- (3) Product service (past and present) and dates;
- (4) Date of last cleaning/physical entry inspection and contractor's name;
- (5) Structural condition based on cycle inspection at the time of cleaning or repair;
- (6) Record of tank repairs;
- (7) Tank dimensions and capacity;
- (8) Inspection and tank cleaning frequency;
- (9) Tank coating history;
- (10) Tank strapping charts;
- (11) As built drawings (if available); and
- (12) Records of product tests and trends.

(b) At the Contractor's expense, the Contractor shall empty, inspect, and clean each bulk petroleum storage tank and dispose of all tank bottom waste for each tank furnished under this contract at the following intervals:

(1) AVIATION FUEL STORAGE TANKS.

- (i) Every 4 years for uncoated storage tanks without an inlet-filter separator;
- (ii) Every 6 years for coated tanks or tanks equipped with an inlet-filter separator; and
- (iii) Every 8 years for coated tanks with an inlet-filter separator.
- (iv) For storage tanks with direct receipt of fuel from barge or tanker, the frequency for physical entry inspection and cleaning will be 3, 5, and 8 years for (i), (ii), and (iii) above, respectively.
- (v) Tanks will be emptied, cleaned, and inspected more frequently than the periods stated in (i) through (iv) above when sample analysis indicates a build up of sediment in the tanks.

(2) GROUND AND MARINE FUEL STORAGE TANKS.

Tanks will be emptied, cleaned, and inspected when sample analysis indicates a build up of sediment in the storage tanks.

(c) The time for cleaning will be measured from the date of the last cleaning regardless of whether the tank was under contract with DESC at the time of the last cleaning.

(d) MIL-STD-457B, dated 20 March 1989, is hereby incorporated by reference. Samples will be taken and tested at Government expense. If tanks require cleaning as a result of off-specification product introduced by the Government, or as a result of product changeover required by the Government, tanks will be cleaned at the Government's expense and remain on revenue. In all other cases, tanks requiring cleaning will be removed from revenue and cleaned at the Contractor's expense.

E22.03 LIST OF INSPECTORS FOR PETROLEUM STORAGE AND LABORATORY SERVICES CONTRACTS**(DESC JUN 1993)**

This List of Inspectors shall be used to identify, by location, the Government inspector (Quality Surveillance Representative) assigned inspection responsibilities under DESC storage and laboratory services contracts. The area of inspection responsibility and identifying office are assigned below. Inspection offices are indicated in numbered footnotes at the end of each paragraph.

(a) AREA OF RESPONSIBILITY WITHIN CONUS, CENTRAL AMERICA OR SOUTH AMERICA:

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	<u>FOOTNOTE</u>
Alabama	3	Nebraska	2
Arizona	3	Nevada	4
Arkansas	3	New Hampshire	1
California	4	New Jersey	1
Caribbean countries	3	New Mexico	3
Central America	3	New York	1
Colorado	2	North Carolina	3
Connecticut	1	North Dakota	2
Delaware	1	Ohio	2
District of Columbia	1	Oklahoma	3
Florida	3	Oregon	4
Georgia	3	Pennsylvania	1
Idaho	4	Puerto Rico	3
Illinois	2	Rhode Island	1
Indiana	2	South America	3
Iowa	2	South Carolina	3
Kansas	2	South Dakota	2
Kentucky	2	Tennessee	3
Louisiana	3	Texas	3
Maine	1	Utah	4
Maryland	1	Vermont	1
Massachusetts	1	Virginia	1
Mexico	3	Washington	4
Michigan	2	West Indies	3
Minnesota	2	West Virginia	1
Mississippi	3	Wisconsin	2
Missouri	2	Wyoming	2
Montana	4		

FOOTNOTES:

1. DFR Northeast (DFR-NE)
2404 Tuskegee Airmen Ave.
McGuire AFB, NJ 08641-5112

Phone: DSN 440-3766
COM (609) 724-3766

2. DFR Central (DFR-C)
8900 S. Broadway, Building 2
St. Louis, MO 63125-1513

Phone: DSN 693-8346
COM (314) 263-8346

FAX DSN 440-3106

FAX DSN 693-8429

3. DFR South (DFR-S)
Federal Building, Room 1005
2320 LaBranch Street
Houston, TX 77004-1091

Phone: DSN 940-1152
COM (713) 750-1371
FAX (713) 750-1891

4. DFR West (DFR-W)
3171 N. Gaffey Street
San Pedro, CA 90731-1099

Phone: DSN 972-3090
COM (310) 335-3090
FAX (310) 514-6106

(b) OVERSEAS AREA OF RESPONSIBILITY (INCLUDING ALASKA AND HAWAII):

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	<u>FOOTNOTE</u>
Afghanistan	2	Marianas	3
Africa (except countries assigned to DFR Middle East)	1	Mediterranean Sea countries	1
Alaska	3	New Zealand	3
Australia	3	Oman	2
Bahrain	2	Pakistan	2
Burma	3	Philippines	3
Djibouti	2	Qatar	2
East Indies	3	Ryukyu Islands	3
Egypt	2	Saudi Arabia	2
Ethiopia	2	Somalia	2
Europe (continental)	1	South Pacific Islands	3
Hawaii	3	Sri Lanka	3
Indian Ocean countries	3	Sudan	2
Japan	3	Taiwan	2
Jordan	2	Thailand	3
Kenya	2	Turkey	1
Korea	3	United Arab Emirates	2
Kuwait	2	United Kingdom	1
Malaya	3	Yemen	2

FOOTNOTES:

1. DFR Europe (DFR-E)
Unit 23306
APO AE 09189

Phone: Pirmasens, Germany
DSN (314) 495-6014
COM 49-633-186-6014
FAX 011 49-633-186-6026

2. DFR Middle East (DFR-ME)
PSC 451, Box 386
FPO AE 09834-0386

Phone: Awali, Bahrain
DSN (318) 439-4650
COM 011 973-724650
FAX 011 973-724670

3. DFR Pacific (DFR-P)
Building 11, Room 211
Camp H.M. Smith, HI 96861-5010

Phone: DSN (315) 477-6692
COM (808) 477-6792
FAX (808) 477-5710

(DESC 52.246-9F45)

E22.01 QUALITY REPRESENTATIVE (DESC JUL 1992)

The Quality Office assigned inspection responsibility under this contract is Defense Energy Office – Los Angeles, 310-335-3090 X 401.

(DESC 52.246-9F35)

E28 CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) (DESC NOV 1991)

(a) Inspection and tests by the Government of services, facilities, and equipment specified within this contract does not relieve the Contractor from responsibility to meet all requirements of the contract.

(b) The Contractor shall furnish personnel, facilities, and equipment to accomplish the following as routine procedures:

(1) "Sampling of storage tanks and loaded shipping containers in accordance with ASTM D 4057, Manual Sampling of Petroleum Products";

(2) Retaining of product composite samples from loaded shipping containers as follows:

<u>METHOD OF SHIPMENT</u>	<u>MINIMUM QUANTITY</u>	<u>MINIMUM RETENTION PERIOD</u>
Pipeline	20 Liters	60 days
Tanker/Barge		
Parcel Composite	20 Liters	90 days
Each compartment	0.5 Liters	90 days
Tank Truck/Car	1 Liter	15 days

(3) Determining presence of water in storage tanks and loaded shipping containers. Ensure that accurate water cuts are obtained by means of a water indicating paste conforming to MIL-W-83779B. Two suggested sources are Stewart Hall Chemical Testmaster Water Indicating Paste) or Sartomer (Sar Gel Water Indicating Paste):

(4) Determining Density at 15°C or API gravity of products by ASTM D 1298 or ASTM D 4052;

(5) Determining the temperature of products by ASTM D 1086;

(6) Determining the appearance of products using ASTM D 4176 and color. For distillate fuel (F76 and DF2), determine the ASTM color by ASTM D 1500 (see note below);

(7) Determining the flash point of applicable fuels and lubricants as required by the applicable product specification;

(8) Conversion of gross to net gallonage (liters);

(9) Determining the percentage (volume) of fuel system icing inhibitor by means of a portable refractometer. One suggested source is H.B. Industries, Inc., Glenview, IL 60025 (B/2 Anti-Icing additive test kit) (see note below); and

(10) Determining the range of fuel electrical conductivity by ASTM D 2624. Suggested source for a conductivity meter is Emcee Electronics, Inc., Sarasota, FL 33581 (Model 1152) (see NOTE below).

NOTE: The Contractor shall permit the Quality Representative unrestricted use of this equipment and ancillary supplies.

(c) The Contractor shall furnish hereunder, from time to time, at the request of, and in the manner and to the place designated by, the Quality Representative, samples representative of the product in each storage tank or product shipped or received. Sample size will be 2 gallons for gasoline type fuels and for jet or diesel fuels either 1 gallon or 10 gallons. The number of samples to be furnished during any 12-month period shall not exceed eight times the number of tanks specified in the contract. Such samples shall be packed, marked, and shipped by the Contractor, shipping expense prepaid, in containers and shipping boxes furnished by the Contractor. Sample containers shall be epoxy coated on the interior. This requirement is in addition to sampling required by the TESTING OF PETROLEUM PRODUCTS clause.

E34 TEST FOR SULFIDES IN WATER (DESC MAY 1987)

(a) **SCOPE.** This method describes a procedure for determining the presence of hydrogen sulfide, which is sometimes formed as a result of bacterial action on the sulfates contained in water bottoms in fuel storage tanks.

(b) **APPARATUS.** 250 ml conical flask.

(c) **MATERIALS.**

(1) Dilute (10%) chemically pure sulfuric or hydrochloric acid.

(2) Lead acetate paper.

(d) **SAMPLES.** Representative water samples from storage tank bottoms must be taken in a glass bottle. In some cases it will be necessary to take the water sample in a Bacon bomb sampler. Samples so taken will always be transferred to a glass bottle. To preclude oxidation by air, the filled bottle must be capped immediately. The sample should be tested as soon as possible after sampling to minimize possible changes in the composition of materials in the water.

(e) **PROCEDURE.**

(1) The sample must be shaken thoroughly just prior to performing the test to make certain that any sediment present is included in the portion of the sample to be tested.

(2) Transfer 100 ml of the shaken sample into a conical flask. Add 20 ml of dilute (10%) chemically pure sulfuric or hydrochloric acid to the flask. Immediately place a piece of lead acetate paper folded in a "V" shape in the neck of the flask. Bring the water to a boil and continue to gently boil for three or four minutes.

(f) **REPORT.** The presence of sulfides in the sample will be reported if the lead acetate paper shows a black or brown discoloration.

E36 INSPECTION (STORAGE) (DESC FEB 1970)

The facilities to be provided hereunder shall be ready for inspection and acceptance by fifteen (15) days prior to service start date. The Contractor shall notify the Contracting Officer of the date such tanks and facilities are available for inspection and acceptance, and the Contracting Officer, or his designated representative, shall promptly thereafter inspect such tanks and facilities. No payment will be made for services performed or facilities provided prior to service start date.

E50 RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(FAR 52.246-16)

SECTION F – DELIVERIES OR PERFORMANCE

F1.04 GENERAL RECEIVING AND STORING CONDITIONS (DFSC JUL 1992)

(a) Receipt of products hereunder will be made pursuant to prior notices to the Contractor by the Ordering Officer or his designated representative. Such notices will indicate the method of receipt, the source, type of grade or product, or any other special instruction.

(b) The Contractor shall transfer and store each grade of product by means of independent or properly protected facilities to preserve the quality thereof and to prevent contamination. In any event, responsibility to prevent contamination rests with the Contractor.

(c) When requested by the Quality Representative (QR), the Contractor shall transfer product between tanks to consolidate products of like type or grade.

(d) Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to effect the release of the tank to the Contractor, the Contractor shall strip such tank in the manner and to the extent prescribed by the QR. All unrecoverable tank bottoms/line fill quantities and/or contaminated/off-specification product will be reported to the Property Administrator for disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government Service. Tanks out of service for cleaning shall be governed by the INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS clause.

(e) Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

(f) Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities whether it be a storage tank, line, or any type of receiving equipment furnished by the Contractor.

(g) Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

(h) Except for delay(s) occasioned by cause beyond the control and without the fault or negligence of the Contractor, demurrage charges, arising from the receipt or shipment by tank cars or transport trucks resulting from the Contractor's delay, shall be for the Contractor's account.

(i) When it is necessary to upgrade or downgrade a product, the Contractor will prepare and process the following certificate on bond paper:

I certify that _____ gallons of _____ has been (upgraded) (downgraded)
(quantity) (product)
from _____ to _____. This action was required because
(product) (product)

(enter reason for the action)

Signature of Contractor Representative

☐ I concur with the certification made by the Contractor.

☐ I do not concur with the certification made by the Contractor for the following reasons:

Signature of QR

(A receipt transaction will be reflected on the monthly stock report for the gaining product, with a shipment being reflected for the losing product.)

(j) The following subparagraphs apply only to barges and tankers.

(1) Notice shall be furnished the Contractor at least 48 hours for barges and 72 hours for tankers, in advance of the date on which delivery is to be made, which date is hereinafter referred to in this clause as the "Scheduled Arrival Date." Each notice will specify the quantity to be delivered, the cargo number and name of vessel, and the scheduled arrival date. Any change in the scheduled arrival date of less than 48 hours for barges and 72 hours for tankers by the Ordering Officer will require the approval of the Contractor. When the location of the vessel loading point is in the same geographical area and vessel transit time is less than 48 hours, the Ordering Officer will provide the maximum amount of notice practicable in advance of scheduled arrival date.

(2) The Government will notify the Contractor, or cause to be notified, of the name, size, and expected hours of arrival of each tanker at least 72 hours before the time of arrival.

(3) Within 3 hours after receipt of notice by the Contractor from the Master or Mate of a barge and within 6 hours after receipt of notice by the Contractor from the Captain or Master of the tanker of readiness to unload, the Contractor will provide, free of cost, a reachable berth where the barge or tanker can be safely moored and afloat with necessary access thereto; PROVIDED, however, that if the Contractor does not receive notice of a barge or tanker's readiness to unload within 24 hours before or after noon of the latest approved scheduled delivery date, the Contractor will be allowed 12 hours for barges and 24 hours for tankers after receipt of notice within which to provide a berth.

(4) Unless otherwise provided in the Schedule, the Contractor shall be allowed, and will complete, unloading within laytime determined as follows:

FOR BARGES. One hour for each 2,000 barrels of product to be unloaded plus 1 1/2 hours.

FOR TANKERS. One-half of the allowable laytime as provided for in the American Tanker Rate Schedule (for multiport discharges, one-half of the allowable laytime will be prorated based on quantities discharged at each port); PROVIDED, however, that if the conditions or facilities of the barge or tanker to be unloaded do not permit unloading within the number of hours so determined, such allowed laytime shall be increased by a number of hours sufficient to permit the unloading of the barge or tanker; PROVIDED, further, that when the barge is delayed in reaching its berth within 3 hours or 12 hours, or the tanker is delayed within 6 hours or 24 hours, as the case may be, from the time notice of readiness to unload is given, and the delay is caused by the fault of the barge or tanker, such allowed laytime shall be increased by the duration of such delay; PROVIDED, further, that if regulations of the owner or operator of the barge, or tanker, or Port Authorities prohibit unloading at any time, time so lost shall be added to the amount of such allowed laytime; and PROVIDED, further, that if for any reason the Contractor is delayed in unloading the barge, or tanker, or there is a delay in releasing the barge or tanker for sailing, because of action of the QR that arises through no fault of the Contractor, such allowed laytime shall be increased by the duration of such delay. Laytime shall commence either (i) at the expiration notice period prescribed by (3) above (the 3 hours' or 12 hours' notice or the 6 hours' or 24 hours' notice, as the case may be), berth or no berth, or (ii) immediately upon the barge or tanker's arrival in berth (i.e., all fast), with or without notice of readiness, whichever occurs first. Laytime shall continue 24 hours a day, 7 days a week, without interruption from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

(5) For all hours of laytime which elapse in excess of the allowed laytime for unloading provided for by (4) above, or as otherwise provided in the Schedule, the Contractor shall pay demurrage, computed to the nearest whole hour, to the owners or operators of any barge or tanker or reimburse the Government at the rate in the charter if a charter barge or tanker; or if not a chartered barge or tanker, at the charter rate applicable to barges or tankers of the type unloaded under market conditions prevailing on the date the barge or tanker is unloaded, except that, if a chartered barge or tanker, the demurrage payable by the Contractor shall in no event exceed the actual demurrage expense incurred by the Government under the charter.

(6) Hoses for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

(7) Custody of product delivered, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the permanent hose connection of the barge or tanker unloading the product.

(8) While unloading, the barge or tanker shall be governed by all applicable regulations in force at unloading ports, including those relating to fire on board ships.

(9) The Contractor shall allow each vessel to unload at a maximum rate, commensurate with terminal capability.

(DFSC 52.212-9F14)

F1.05 GENERAL SHIPPING CONDITIONS (DFSC DEC 1994)

The Contractor will prepare the inspection and shipment documents covering deliveries made from the terminal in accordance with instructions contained in the Documentation and Product Property Control Plan. Normally, the document will consist of DD Form 250 for tank car, tank truck, pipeline, and packaged shipments, and DD Form 250-1 and ullage/innage reports in the case of barge and tanker shipments. The Contractor will distribute the DD Forms 250 and the Quality Representative (QR) will distribute the DD Forms 250-1. When the QR is not present for release or shipment of product inspected at these facilities, and the Contractor's quality control program has been approved by the responsible Government Quality Office in accordance with paragraph 246.471 of the DOD FAR Supplement, the Contractor will insert the following certification on the inspector's copy of the shipping documents:

"I certify that the above supplies were (a) in the quantity indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471-2 of the DoD FAR Supplement under authorization of (NAME and TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE CONTRACT ADMINISTRATION OFFICE) in a letter dated (DATE OF AUTHORIZING LETTER). (SIGNATURE AND TITLE OF CONTRACTOR'S DESIGNATED REPRESENTATIVE)."

(b) Shipment of products hereunder will be made only pursuant to a "release" furnished by the Product Property Administrator or his designated representative. The "release" will indicate the consignees who are authorized to issue "calls" or "orders" for shipment of product. Such "release" will be periodically furnished the Contractor by the cognizant Product Property Administrator.

(c) Conveyances required for shipments shall be furnished or designated by the Government. The Contractor shall inspect all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of Contractor personnel. Equipment found to be unsatisfactory shall be reported as follows: (1) TANKERS AND BARGES. Report immediately by telephone to the QR; if not present, the master of the tanker or barge or to the carrier's agent or general office; (2) TANK CARS. Report to the QR and by wire (Government Rate, Collect) to Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-INR-O, Brooklyn, NY 11250. Any shortage or overage of tank cars shall be similarly reported; (3) TRANSPORT TRUCKS. Contractor shall expeditiously report to the Traffic Manager of the appropriate Defense Fuel Region, Government QR, and to the carrier's terminal where equipment is domiciled.

(d) Except when loading barges or tankers, or making pipeline deliveries, strainers of 100 mesh or finer shall be utilized in loading aviation fuels and jet lubricating oil and 60 mesh or finer in the case of reciprocating engine oil. Strainers shall be located as near the loading point as practicable. Contractor shall furnish and periodically inspect and clean such strainers and repair same, if necessary, keeping a written record thereof.

(e) Contractor shall affix serially numbered seals to the dome covers of tank cars and all openings in the case of tank trucks in such a manner that entry could only be gained by breaking a seal. Such seals will be furnished by the Contractor. Seal numbers will be indicated on shipping documents.

(f) Placards, as required by 49 CFR 172.506 and 49 CFR 172.508, shall be furnished and affixed to all tank cars and tank trucks by Contractors unless placards are already affixed.

(g) (1) If Government owned or leased tank cars are furnished, the Contractor will maintain records showing each day a car is received or forwarded by car number and will furnish the information to the Defense Fuel Regional Office upon request.

(2) Bottom outlet gaskets and manway cover gaskets, when required due to deterioration or loss, shall be furnished and applied to tank cars by the Contractor.

(3) The Contractor shall (i) inspect empty Government-owned tank cars located on the Contractor's premises and (ii) ship tank cars located on the Contractor's premises to repair facilities as directed by the Government.

(h) Unless otherwise directed, the Contractor shall prepare and distribute Government bills of lading utilized in shipments. Such bills of lading, routing instructions, and transportation assistance will be furnished by the Defense Fuel Region placing orders.

(i) The Contractor shall comply with routing instructions furnished by the Government. Such instruction will include names, routes, route order numbers, and other pertinent information. The Contractor shall be responsible for scheduling of commercial transport trucks, trucks and trailer, and tank wagons to its plant in accordance with such routing instructions and consonant with the applicable order. The Contractor shall provide sufficient advance notice to carriers and schedule the carrier's equipment for loading, considering the physical limitations of the loading facilities. The Contractor shall reimburse the Government for any demurrage incurred as a result of improper scheduling.

(j) Custody of product shipped by pipeline, and risk of loss thereof, shall pass from the Contractor to the carrier when the product passes the flange connecting the Contractor's pipeline and the carrier's pipeline.

(k) Custody of product shipped by transport truck, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded transport truck is released for shipment by the Contractor.

(l) Custody of product shipped by tank car, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded tank car is picked up by the carrier.

(m) Except for delay(s) occasioned by causes beyond the control and without the fault or negligence of the Contractor, demurrage charges arising from the receipt or shipment by tank cars or transport trucks resulting from Contractor's delay shall be for the Contractor's account.

(n) The following paragraphs apply only to barges and tankers.

(1) Notice to the Contractor will be furnished by the Government at least 48 hours for barges and 72 hours for tankers in advance of the date of which loading is to be made, which date is hereinafter referred to in this clause as the "Scheduled Loading Date." Each notice will specify the quantity to be loaded, the scheduled loading date, the cargo number, and, if then available, the name and size of the equipment to be loaded. Any change in a scheduled loading date of less than 48 hours for barges and 72 hours for tankers by the Ordering Officer will require the approval of the Contractor.

(2) The Government will notify the Contractor, or cause it to be notified, of the name and expected hour of arrival of each tanker at least 72 hours before the time of arrival.

(3) Within 3 hours after receipt of notice by the Contractor from the Master of a barge and within 6 hours after receipt of notice by the Contractor from the Master of a tanker of readiness to load, the Contractor shall provide, free of cost to the Government, a reachable berth where the barge or tanker can be safely moored and afloat with necessary access thereto; PROVIDED, however, that if the Contractor does not receive notice of a barge or tanker's readiness to load within 24 hours before or after noon of the latest approved scheduled loading date, the Contractor will be allowed 12 hours for barges and 24 hours for tankers after receipt of notice within which to provide a berth.

(4) The Contractor shall be allowed, and shall complete, loading within laytime determined as follows:

(i) **FOR BARGES.** One hour for each 2,000 barrels of product to be loaded, plus 1 1/2 hours; PROVIDED, however, that if the condition of facilities of the barge to be loaded do not permit loading within the number of hours so determined, such allowed laytime shall be increased by a number of hours sufficient to permit the loading of the barge; PROVIDED, further, that when the barge is delayed in reaching its berth within 3 hours or 12 hours, as the case may be, from the time notice of readiness to load is given, and the delay is caused by the fault of the barge, such allowed laytime shall be increased by the duration of such delay; PROVIDED, further, that if regulations of the owner or operator of the barge or Port Authorities prohibit loading at any time, time so lost shall be added to the amount of such allowed laytime; and PROVIDED, further, that if for any reason the Contractor is delayed in loading the barge, or there is a delay in releasing the barge for sailing, because of action of the QR that arises through no fault of the Contractor, such allowed laytime shall be increased by the duration of such delay. Laytime shall commence either (A) at the expiration of the notice period prescribed by (3) above (3 hours' or the 12 hours' notice, as the case may be), berth or no berth, or (B) immediately upon the barge's arrival in berth (i.e., all fast), with or without notice or readiness, whichever first occurs. Laytime shall continue until unloading of the barge is completed and the barge has been released for sailing by the Inspector.

(ii) **FOR TANKERS.** (A) One half of the allowable laytime as provided for in the American Tanker Rate Schedule; (B) where partial tanker loads are ordered, the laytime will be based on the quantity loaded prorated against one half of the allowable laytime as provided for in the American Tanker Rate Schedule; PROVIDED, however, that if the condition of facilities of the tanker to be loaded do not permit loading within such period of time, such allowed laytime shall be increased by a number of hours sufficient to permit the loading of the tanker; PROVIDED, further, that when the tanker is delayed in reaching its berth within 6 hours, or 24 hours as the case may be, from the time notice of readiness to load is given, and the delay is caused by the fault of the tanker, such allowed laytime shall be increased by the duration of such delay; PROVIDED, further, that if regulations of the owner or operator of the tanker or Port Authorities prohibit loading due to causes beyond the control of the Contractor, time so lost shall be added to the amount of such allowed laytime; and PROVIDED, further, that if for any reason the Contractor is delayed in loading the tanker, or there is a delay in releasing the tanker for sailing, because of action of the QR that arises through no fault of the Contractor, such allowed laytime shall be increased by the duration of such delay. Laytime shall commence either (A) at the expiration of the notice period prescribed in (3) above (the 6 hours' or the 24 hours' notice period, as the case may be), berth or no berth, or (B) immediately upon the tanker's arrival in berth (i.e., all fast), with or without notice of readiness, whichever occurs first. Laytime shall continue 24 hours a day, 7 days a week, without interruption from its commencement until loading of the tanker is completed and the tanker has been released for sailing by the QR.

(5) The Contractor will pay demurrage to the Government for all hours of laytime that elapse in excess of the allowed laytime for loading set forth in (4) above. If the vessel is under a voyage (spot) charter, demurrage will be assessed at the rate provided in the charter. If the vessel is not under a voyage charter, demurrage will be assessed at the demurrage rate for that class of vessel as published by the Military Sealift Command (MSC). For long term barge contracts not awarded by MSC, demurrage will be assessed at the contract hire rate for the vessel in question calculated on an hourly basis. In the case of a voyage chartered vessel, the demurrage payable by the Contractor shall in no event exceed the actual demurrage expense incurred by the Government under the charter.

(6) Hoses for loading a barge or tanker shall be furnished, connected, and disconnected by the Contractor.

(7) Custody of the Government product, and risk of loss thereof, shall pass from the Contractor to the carrier when the product passes permanent hose connections of the barge or tanker.

(8) The temperature of any fuel oil loaded shall be at least 10°F below the flash point of the oil and in no case higher than 150°F if the cargo tanks are uncoated, or 135°F if coated; PROVIDED, however, that in no event shall the difference between the temperature of the oil entering the tanker manifold and the recorded temperature of sea water at the tanker's condenser intake exceed 70°F.

(DFSC 52.247-9F08)

F1.14 DETERMINATION OF QUANTITY (STORAGE) (DFSC NOV 1997)

The total gallage received into or shipped from the Contractor's facilities shall be determined as follows:

(a) **RECEIPTS OR SHIPMENTS OF CRUDE AND FUELS OTHER THAN RESIDUAL FUELS** (by transport truck of 3500 gallons or less) (truck and trailer combination when delivering same product will be considered as one container or conveyance). On an actual gallage basis, without temperature correction.

(b) **RECEIPTS OR SHIPMENTS OF RESIDUAL FUELS** (in excess of 3500 gallons of crude or other fuels by tank car or transport truck). On a gallage basis corrected to 60°F.

(c) **RECEIPTS OR SHIPMENTS BY TANKER OR BARGE OR PIPELINE.** On a gallage basis corrected to 60°F. Quantities shipped or received will be determined on the basis of shore tanks or tender gauges taken by the Contractor and authenticated by the Quality Representative (QR). The ship or carrier's representative may participate in these determinations. During the gauging of shore tanks, the tanker, barge, or carrier's representative may participate in the quantity determinations, and, in the case of tanker/barge shipments or receipts, the Contractor may participate in the operations on board the tanker or barge which are required to determine the quantity of product in the tanker or barge cargo tanks.

(d) In the case of receipts, the Contractor shall sign the bill of lading and other related documents for the actual quantity received as determined above. When requested by the QR, the Contractor shall investigate losses or gains in connection with receipts or shipments to determine if the cause is at the Contractor's facility.

(e) **MEASUREMENT STANDARDS.** All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside the United States, other technically equivalent national or international standards may be used. In addition, the following specific standards will be the referee method.

(1) **API MPMS Chapter 11.1, Volume Correction Factors (API 2540/ASTM D 1250/IP 200/ISO 91-1).** Either the printed version or the computer subroutine version of the standard may be used. In case of disputes, the computer subroutine will be the referee method.

(i) For crude oils, JP4, and Jet B, use Volume I, Tables 5A and 6A (or Volume VII Tables 53A and 54A).

(ii) For lubricating oils, use Volume XIII, Tables 5D and 6D (or Volume XIV, Tables 53D and 54D).

(iii) For all other fuels and fuel oils, use Volume II, Tables 5B and 6B (or Volume VIII, Tables 53B and 54B).

(iv) For chemicals/additives, use Volume III, Table 6C (or Volume IX, Table 54C), or volume correct in

accordance with the product specification.

(v) Volume XII, Table 52, shall be used to convert cubic meters at 15°C to barrels at 60°F. Convert liters at 15°C to cubic meters at 15°C by dividing by 1,000. Convert gallons at 60°F to barrels at 60°F by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

(vi) If the original measurement is by weight and quantity is required in U.S. gallons, then--

(A) Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60°F/ Convert kilograms to metric tons by dividing by 1,000.

(B) Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60°F.

(2) **API MPMS Chapter 4, Providing Systems.** All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulations (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

(3) **API MPMS Chapter 12, Calculation of Petroleum Quantities.** All calculations of net quantities shall be made in accordance with this chapter.

(f) In addition to gauging of storage tanks to determine quantities issued or received, the Contractor will gauge each active storage tank daily and each inactive storage tank weekly and compute physical inventories for the purpose of detecting loss of products.

F76 CONTRACT PERIOD/PERFORMANCE REQUIREMENTS (STORAGE) (DFSC DEC 1991)

During the contract period, May 1, 2000 through April 30, 2005 the Contractor shall provide petroleum storage facilities and services at the following location:

(Street address)

(City/State/Zip)

F107 STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(FAR 52.242-15)

SECTION G – CONTRACT ADMINISTRATION DATA

G1 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.
(DFARS 252.242-7000)

G3 INVOICE NUMBERING REQUIREMENTS (DFSC DEC 1994)

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected. For invoices submitted under the ELECTRONIC SUBMISSION OF INVOICES FOR PAYMENT clause, invoice numbers are limited to five characters.

G3.01 PAYMENT DUE DATE (DFSC OCT 1988)

When payment due date falls on a Saturday or Sunday, or on a United States Official Federal holiday, payment will be due and payable on the following workday.

G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DFSC MAY 1990)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in block 15a (Standard Form (SF) 33). In addition, if offeror did not incorporate its nine-digit zip code in the address shown in block 15a of the SF 33, the offeror shall enter it below:

(a) Payee Name (Contractor): _____
(DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

(DO NOT EXCEED 30 CHARACTERS PER LINE)

(c) Recipient Name (authorized individual representing the Contractor/courier for check pick-up).
Leave blank if check is to be mailed.

(DO NOT EXCEED 25 CHARACTERS)

(d) Narrative Information (special instructions).

(DO NOT EXCEED 153 CHARACTERS)

G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DFSC OCT 1997)

(a) This clause does not apply to orders for Federal Civilian Agency deliveries.

(b) The Contractor shall supply the following information to the Contracting Officer no later than 3 days after contract award unless the Contractor certifies in writing to the Contracting Officer that the Contractor does not have an account with a financial institution or an authorized payment agent:

NAME OF RECEIVING BANK: _____

(DO NOT EXCEED 29 CHARACTERS)

CITY AND STATE OF RECEIVING BANK: _____

(DO NOT EXCEED 20 CHARACTERS)

AMERICAN BANKERS ASSOCIATION NINE DIGIT IDENTIFIER OF RECEIVING BANK: _____

ACCOUNT TYPE CODE: (Contractor to designate one)

☐ CHECKING TYPE 22

☐ SAVINGS TYPE 32

RECIPIENT'S ACCOUNT NUMBER ENCLOSED IN PARENTHESES: _____

(DO NOT EXCEED 15 CHARACTERS)

RECIPIENT'S NAME: _____

(DO NOT EXCEED 25 CHARACTERS)

STREET ADDRESS: _____

(DO NOT EXCEED 25 CHARACTERS)

CITY AND STATE: _____

(DO NOT EXCEED 25 CHARACTERS)

NOTE: Additional information may be entered in EITHER paragraph (c) OR paragraph (d) below. Total space available for information entered in (c) OR (d) is 153 characters.

(c) SPECIAL INSTRUCTIONS/OTHER IDENTIFYING DATA:

(DO NOT EXCEED 153 CHARACTERS)

OR

(d) THIRD PARTY INFORMATION: Where payment is to be forwarded from the receiving bank to another financial institution for deposit into Contractor's account, the following information must be supplied by the Contractor: Second Bank Name, City/State and/or Country, Account Number, and Account Name.

(e) Any change by the Contractor in designation of the bank account to receive electronic transfer of funds in accordance with this clause must be received by the Contracting Officer no later than 15 days prior to the date the change is to become effective.

(g) In the event CTX payments cannot be processed, the Government retains the option to make payments under this contract by check.

(1) The bank designated as the receiving bank must be located in the United States and must be capable of receiving Automated Clearing House (ACH) transactions. The appropriate American Bankers Association nine-digit identifier must be supplied in order for payments to be processed through CTX.

(3) The Third Party Information supplied in (d) above will be located in the first RMT segment of the CTX payment information sent to the receiving bank.

G9.09 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1997)

(b) MANDATORY SUBMISSION OF CONTRACTOR'S EFT INFORMATION.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.

(d) **REQUIRED EFT INFORMATION.** The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.

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(4) For ACH payments only:

- (i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve Wire Transfer System payment only:

- (i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's

financial agent.

(ii) If the Contractor's financial agent is not directly online to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) **SUSPENSION OF PAYMENT.**

(1) Notwithstanding the provisions of any other clause of this contract, the Government is not required to make any payment under this contract until after receipt, by the designated payment office, of the correct EFT payment information from the Contractor or a certificate submitted in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the PROMPT PAYMENT clause of this contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the PROMPT PAYMENT clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) **CONTRACTOR EFT ARRANGEMENTS.** The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer under the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing transfers.

(g) **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS.**

(1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously direct funds; or

(ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) **EFT AND PROMPT PAYMENT.**

(1) A payment shall be deemed to have been made in a timely manner in accordance with the PROMPT PAYMENT clause of this contract if, in the EFT payment transaction instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.

(i) **EFT AND ASSIGNMENT OF CLAIMS.** If the Contractor assigns the proceeds of this contract as provided for in the ASSIGNMENT OF CLAIMS clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) **PAYMENT OFFICE DISCRETION.** If the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) **CHANGE OF EFT INFORMATION BY FINANCIAL AGENT.** The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

(FAR 52.232-33)

G22 DESIGNATION OF THE DEFENSE FUEL REGION (DFSC JUL 1997)

(a) The Defense Fuel Region to which reference is made herein is the--

Commander
 Defense Energy Support Center – Americas
 2320 La Branch St.
 Room 2118
 Houston, Texas 77004-1091
 Phone: DSN: 940-1152 X 701
 Commercial: 713-718-3770 X 701

(b) The Defense Energy Office to which reference is made herein is the— Commander, Defense Energy Office – Los Angeles.

(c) The Commander of the Defense Fuel Region or his designee, appointed above, is the authorized representative of the Commander, Defense Energy Support Center.

(DFSC 52.242-9F05)

G148.05 SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DFSC MAR 1996)

Monthly services invoices shall be mailed directly to the Accounting and Finance Office after self-certification. All other invoices are mailed to the Contract Administration Office (CAO) after Quality Representative (QR) certification. Specific procedures follow:

(a) **MONTHLY INVOICES.** Contractors shall present invoices for monthly services (original and 3 copies) directly to the following Accounting and Finance Office within one month following the performance of the respective services:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER
 STOCK FUND DIRECTORATE
 FUELS ACCOUNTING AND PAYMENTS DIVISION
 ATTN: DFAS-CO-SFFB
 P.O. BOX 182317
 COLUMBUS, OH 43218-6250

Each invoice will be certified by an official of the company in the following manner:

"I certify that the services were performed, that the amounts reflected hereon are in conformance with the contract, and that the amounts are correct and proper for payment."

Signature _____
 (PRINTED NAME AND TITLE)

(b) ALL OTHER INVOICES.

- (1) Contractors shall address invoices to the Accounting and Finance Office listed in (a) above.
- (2) Contractors shall certify that the invoice is true and correct and shall attach supporting documentation (e.g., subcontractor bills or invoices) for cost reimbursement invoices.
- (3) Contractors shall then present the invoice (original and 4 copies) to the cognizant QR for certification that the invoice is true and correct to the best of the QR's knowledge and that the supplies or services included on the invoice have been provided.
- (4) Last, Contractors shall submit the invoice to the applicable CAO address below for approval and for processing to the Accounting and Finance Office for payment. Upon mutual agreement between the Contractor and the QR, the QR may submit the invoice directly to the CAO after certification.

CONUS Contract Locations

ATTN DFSC-FPC, ROOM 2945
 DEFENSE FUEL SUPPLY CENTER
 8725 JOHN J KINGMAN RD, SUITE 4950
 FORT BELVOIR VA 22060-6222

OCONUS Contract Locations

ATTN DFSC-FPC, ROOM 2945
 DEFENSE FUEL SUPPLY CENTER
 8725 JOHN J KINGMAN RD, SUITE 4950
 FORT BELVOIR VA 22060-6222

(c) **OVERTIME.** When the Contractor is authorized by the designated Defense Energy Office (DEO) to perform services in excess of normal working hours, the Government will reimburse the Contractor as described in (1) and (2) below. Each invoice for overtime will specify the number of people working, their employment classification, number of hours worked, and the hourly rate of compensation. The written authorization from the DFR must be attached to the invoice. (The authorization for overtime may be

given initially by telephone, but later must be provided in writing by the DFR to the Contractor.) Follow instructions given in (b) above for submission of overtime invoices.

(1) **GOCO (Government-Owned, Contractor-Operated).** The Government will reimburse actual overtime labor rate paid times actual overtime hours, plus social security taxes, insurance, and fringe benefits. No profit or G&A (general and administrative expenses) will be allowed. (Profit and G&A should be included in the monthly services charge based on the dollars estimated for the overtime line item.)

(2) **COCO (Contractor-Owned, Contractor-Operated).** The Government will reimburse at the rate specified in the SCHEDULE clause.

G150.02 COURIER DELIVERY OF INVOICES (DESC JUL 1999)

(a) Couriers, acting on behalf of Contractors, must deliver Contractor invoices being submitted for payment to the following mailroom street address:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER
DFAS-CO-LSF
3990 EAST BROAD STREET, BLDG 21
COLUMBUS, OH 43213-1152

(b) Invoices submitted by courier to the above address will be handled in a timely manner.

(DESC 52.232-9F65)

G150.11 SUBMISSION OF INVOICES BY FACSIMILE (DFSC APR 1997)

NOTE 1: FOR GROUND FUELS (PC&S) CONTRACTS: This clause applies only to items for Army, Navy (including Marines), and other DoD activities (except Air Force, Alaska, Hawaii, GOCO, and standby requirements).

NOTE 2: See paragraph (c) for facsimile invoicing for DETENTION/DEMURRAGE costs.

NOTE 3: INVOICES WILL REFLECT QUANTITIES IN WHOLE NUMBERS AND SHALL BE ROUNDED AS APPLICABLE. Example: $7,529.4 = 7,529$ or $7,529.5 = 7,530$.

(a) **IMPORTANT NOTICE:** Contractors who select the facsimile (FAX) method of invoicing prior to award in accordance with the FACSIMILE INVOICING (Clause K45) provision must do so for all invoices. Failure to comply with the requirements of this clause will result in revocation of the Contractor's right to submit invoices by the FAX method.

(b) **INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.**

(1) When the Contractor has elected to transmit invoices by FAX, it is responsible for validating receipt of its FAXed invoice. Because DFAS-CO-SF cannot be held accountable for transmissions not received, the Contractor must verify transmission/receipt of its FAX by telephoning Customer Service (DFAS-CO-SF) at (800) 453-5014. If local (Columbus Metro Area), the Customer Service number is (614) 693-4994. Personnel are available to verify receipt of FAXed transmissions between 8 a.m. and 5 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.

(2) The DFAS-CO-SF FAX number is (614) 693-0670.

(3) The Contractor shall include its FAX number on each document transmitted.

(4) After transmitting the original invoice, the Contractor shall mark that invoice "**ORIGINAL INVOICE - FAXED**" and retain it. The hard copy is **not** required for payment and shall **not** be mailed to the payment office unless DFAS-CO-SF specifically requests it.

(5) **F.O.B. DESTINATION DELIVERIES.**

(i) **CERTIFICATION OF RECEIPT.**

(A) Receiving activity personnel will certify the receipt of fuel by preparing and signing one of the following documents:

(a) The DD Form 250, Material Inspection and Receiving Report; or

(b) The SF 1449, Solicitation/Contract/Order for Commercial Items; or

(c) The DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report.

(B) Payments to the Contractor will be based on the receipt of the "paying copies" of the receiving report to DFSC-FII, Fort Belvoir, VA, and payment will be made in accordance with the terms of the contract.

(ii) **PC&S DELIVERIES.**

(A) Overbillings--

(a) That are less than or equal to 0.5 percent of the quantity listed on the DD Form 250 or SF 1449 will be paid as originally invoiced by the Contractor when the overbilled quantity is solely a result of a difference in measurement techniques.

(b) That exceed 0.5 percent of the quantity listed on the DD Form 250 or SF 1449 will be paid based on the quantity as determined by the activity and annotated on the activity's receiving document.

(B) Underbillings will be paid as invoiced.

(C) Notwithstanding any permissible variation percentage, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity. Payment shall be made for quantity within this allowable variation listed on the receiving document as received and accepted by the activity and invoiced by the Contractor.

(6) F.O.B. ORIGIN DELIVERIES - RECEIVING REPORTS.

(i) When FAXing an **invoice** for f.o.b. origin deliveries—

(A) The Contractor shall also FAX a copy of the applicable receiving report to DFAS-CO-SFFP for BULK FUELS AND ALL OTHER COOL BARGE DELIVERIES. The receiving report shall be transmitted no later than three days after each delivery;

(B) The Contractor shall also FAX a copy of the applicable receiving report to DFSC-FII, Fort Belvoir, VA, for GROUND FUELS (PC&S) DELIVERIES. The receiving report shall be transmitted no later than two working days after each delivery.

(ii) The following forms, signed by the Quality Representative (QR), are acceptable receiving reports for f.o.b. origin deliveries:

(A) DD Form 250 (Material Inspection and Receiving Report); or

(B) DD Form 250-1 (Tanker/Barge Material Inspection and Receiving Report).

(iii) The signed copy, which certifies acceptance by the QR of the product prior to submission of the invoice, will have the following information stamped, printed, or typed on it: **“ORIGINAL RECEIVING REPORT FOR PAYMENT OF INVOICE.”**

(c) INVOICING DETENTION/DEMURRAGE COSTS VIA FACSIMILE.

(1) **(NOTE:** Detention costs are **not** allowable on tank wagon deliveries.) Since detention and demurrage costs are the sole responsibility of the activity incurring them, the Contractor shall FAX detention/demurrage cost invoices directly to the activity where the costs were incurred.

(2) **FOR COOL BARGE.** Claims for detention/demurrage shall be forwarded to the DFSC Contracting Officer's Technical Representative no later than 120 days after the completion of discharging hereunder, failing which, the Government shall be discharged from any and all liability in respect thereto.

(DFSC 52.232-9F07)

SECTION H – SPECIAL CONTRACT REQUIREMENTS

H11 GUARD SERVICE (DESC MAR 1982)

(a) In the event the Government requires guard service and/or other protective services or facilities not otherwise provided by the Contractor pursuant to the terms of this contract, the Government shall have the right--

- (1) To provide such service; or
- (2) To require the Contractor to provide such guard service; and/or
- (3) To require the Contractor to provide such other protective services or facilities.

(b) The actual cost of providing said services or facilities under (2) and/or (3) above will be for the account of the Government and will be recognized by a modification to this contract.

(DESC 52.211-9FK1)

H19 REPORTING AND CONTAINING OIL SPILLS (DOMESTIC STORAGE) (DESC NOV 1989)

(a) Immediately upon the discovery of a petroleum spill, leak, or seepage involving Defense Energy Support Center (DESC) owned product, the Contractor shall notify, by telephone, (1) the Quality Representative, (2) the designated Defense Energy Region, and (3) the Administrative Contracting Officer (ACO). In addition, if the said spill, leak, or seepage has reached, or if it might possibly reach, navigable waters, the Contractor shall immediately notify the Coast Guard by telephone (800) 424-8802, the appropriate Federal and State officials designated in State laws, and the ACO.

(b) Immediately upon discovery of a petroleum spill, leak, or seepage, the Contractor shall take all practicable measures available to contain and prevent further spreading of such spill, leak, or seepage. Measures taken by the Contractor will be in compliance with all local, State, and Federal laws and regulations.

(c) Any Contractor whose terminal stores product exclusively for DESC use shall prepare and submit an approved Spill Prevention Control and Countermeasure Plan, Oil Pollution Prevention Operations Manual, and Oil Spill Contingency Plan, as applicable. These documents shall be submitted to the ACO and the Defense Energy Region specified in the DESIGNATION OF THE DEFENSE ENERGY REGION clause of this solicitation as soon as practicable after contract award, but no later than 60 days after award notification. The Contingency Plan shall include, but not be limited to, (1) Contractor in-house capability and facilities, or (2) the preselection of a local agency, cooperative, or firm capable of and willing to provide cleanup services of this nature.

(d) The Contractor shall be responsible for maintaining current telephone numbers of the agencies cited herein and in the Contingency Plan upon commencement of the contract period.

(DESC 52.223-9F30)

SECTION I – CONTRACT CLAUSES

II DEFINITIONS (OCT 1995)

As used throughout this contract, the following terms shall have the meaning set forth below.

(a) **Head of the agency** (also called **agency head**) or **Secretary** means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term **authorized representative** means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) **Commercial component** means any component that is a commercial item.

(c) **Commercial item** means--

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in subparagraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirement under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in subparagraph (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. **Minor** modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of subparagraph (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) **Component** means any item supplied to the Federal Government as part of an end item or of another component.

(e) **Nondevelopmental item** means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in subparagraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of subparagraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) **Contracting Officer** means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term **subcontracts** includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(FAR 52.202-1)

11.01-4 DEFINITIONS (CONT'D) (STORAGE) (DFSC JAN 1996)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) **Quality Representative (QR)** includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR).

(1) The QAR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services.

(2) The QSR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing services.

(b) **Petroleum storage facilities** shall include --

(1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum products into and out of such tanks;

(2) Fencing, flood lighting, dikes or fire walls, suitable fire fighting plan and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and

(3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.

(c) The terms **isolated system** and **segregated system** mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed-type valves, etc.

(d) **Dedicated system** means a self contained, single product system with no pipeline connections to any other system in the facility.

(e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

(f) **Shell capacity** means the gross volumetric capacity of the storage tank as determined from tank calibration.

(g) **Fill capacity** means the capacity of the storage tank when filled to the maximum fill level, i.e., the highest point to which a petroleum storage tank may be filled with product, allowing for product expansion and other safety considerations.

(h) **Product or products** means the Government-owned petroleum product(s) within one of the following categories which the Schedule indicates the Contractor is to receive, store, handle, and ship under this contract:

(1) Crude oil shall include any unrefined petroleum in its natural state;

(2) Light fuels includes any grade of the following distillate fuel types: aircraft engine fuels, motor gasoline, naphtha and like solvents, kerosene, diesel fuels and numbers 1 and 2 heating fuels;

(3) Heavy fuels includes number 4 heating fuel and all residual type fuels;

(4) Lubricating oil includes all grades of such product utilized in aircraft, automotive, diesel, and marine engines;

(5) Packaged products means all products packaged in containers of 55-gallon capacity or less.

(i) **Unit of quantity** means--

(1) The U.S. gallon of 231 cubic inches;

(2) The barrel of 42 U.S. gallons;

(3) The long ton of 2240 pounds; and

(4) The pound of 16 ounces, depending upon the unit shown in the Schedule.

(j) **Description of services to be performed** as stated in the CHANGES - FIXED PRICE clause is defined to include, but is not limited to, the following:

(1) The grade or type of product by specification;

(2) The regular working hours set forth in the schedule;

(3) The method of receiving or shipping.

(4) The specifications of Contractor-furnished equipment,

(5) The provisions of the General Delivery Conditions as amended;

(6) The number of the Contractor-furnished units (equipment);

(7) The response time;

(8) The estimated truck movement; and

(9) The MERT hours.

(k) **Equipment or delivery and servicing equipment** as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.

(l) **Fuel and Oil** used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil, and jet engine oil.

(m) **Response time** is defined as that interval of time between the time a call is placed on the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.

(n) For purposes of this contract, the term **truck movement** as set forth above is defined to be any of the following:

(1) The movement of a refueler, defueler, or oiler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."

(2) The movement of a combination refueler/oiler which services an aircraft with both products. Such movement shall be considered a 1 1/2 "truck movement."

(3) The movement of a combination refueler/oiler which services an aircraft with oil only. Such movement shall be considered one "truck movement."

(4) Servicing of group support equipment, small tanks, and/or other units as designated by the Commanding Officer, with either jet fuel or AVGAS, shall count as truck movements if dispatched separately. Each such servicing, if performed in multiples or in conjunction with aircraft fuel delivery, shall be counted as a 1/5 "truck movement" with the exception of the first which will count as one "truck movement."

(5) The movement of a refueler, defueler, or oiler as the result of a service call which is not completed, due to no fault of the Contractor.

(6) The movement of a refueler, defueler, or oiler to a tank farm for purposes of refilling or discharging product as applicable. With regard to refueler refilling, only those refills totaling 1,000 gallons or more per vehicle shall be considered a truck movement. The Commanding Officer may, at his discretion, exercise control and supervision over the refilling/discharging operation.

(DFSC 52.202-9F08)

11.02 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, PROVIDED there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form Number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form PROVIDED there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different from the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(FAR 52.253-1)

11.07 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998)

(a) **DEFINITIONS.** As used in this clause--

(1) **Central Contractor Registration (CCR) database** means the primary DoD repository for Contractor information required for the conduct of business with DoD.

(2) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) **Registered in the CCR database** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423 or via the Internet at <http://ccr.edi.disa.mil>

(DFARS 252.204-7004)

11.19 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1). clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any DOD FAR Supplement Regulation (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(FAR 52.252-6)

11.22 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price-type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.203-10)

11.22-1 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement

contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(FAR 52.203-8)

11.24 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) DEFINITIONS.

Agency, as used in this clause, means executive agency as defined in 2.101.

Covered Federal action, as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and tribal organization, as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

Influencing or attempting to influence as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Reasonable compensation, as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment, as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient, as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) PROHIBITIONS.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) AGENCY AND LEGISLATIVE LIAISON BY OWN EMPLOYEES.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(a) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(a) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(b) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(c) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) PROFESSIONAL AND TECHNICAL SERVICES.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(a) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(b) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are

not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(a) and (b) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) **DISCLOSURE.**

(A) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payments using nonappropriated funds (to INCLUDE profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subdivision (A) of this clause. An event that materially affects the accuracy of the information reported includes--

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(c) A change in the officer(s), employee(s), or Members(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) **AGREEMENT.** The Contractor agrees not to make any payment prohibited by this clause.

(v) **PENALTIES.**

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) **COST ALLOWABILITY.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(FAR 52.203-12)

11.26 REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG 1992)

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend further payments to the Contractor upon a written determination by the agency head that substantial evidence exists that the Contractor's request for advance, partial, or progress payments is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government in accordance with 10 U.S.C. 2307(e) shall not constitute an excusable delay under the DEFAULT clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract.

(DFARS 252.232-7006)

12 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(DFARS 252.204-7003)

12.06 CHANGES - FIXED-PRICE (ALT II) (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(FAR 52.243-1/Alt II)

13 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(FAR 52.232-11)

13.01 PROMPT PAYMENT (MAR 1994)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in FAR 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) INVOICE PAYMENTS.

(1) For purposes of this clause, **invoice payment** means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.

(2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring the submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in PL 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but no later than, the 7th day after product delivery.

(ii) The due date for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the seventh day after product delivery.

(iii) The due date for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(iv) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.

(v) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(4) An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(6) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(5) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(5)(i) through (a)(5)(iii) of this clause are met, if applicable.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the

Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1 or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, DISPUTES.

(7) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor:

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) CONTRACT FINANCING PAYMENTS.

(1) For purposes of this clause, "contract financing payment" means a Government disbursement of monies to a Contractor under contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at FAR 52.232-16, PROGRESS PAYMENTS, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.

(2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(4) Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice. (FAR 52.232-25)

14 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)

(a) Discounts for prompt payments will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(FAR 52.232-8)

15 DISCOUNTS FOR PROMPT PAYMENT (DFSC JUN 1996)

(a) An offered discount will be taken if payment is made within the discount period. The decision to make payment within the discount period will be made at the discretion of the accounting and finance office responsible for payment.

(b) For prompt payment discounts offered on individual invoices, the discount period should not be less than 10 days and the rate of interest for taking the discount should meet or exceed the rate established by the United States Treasury, effective on the date of the invoice.

(c) FOR THE PURPOSE OF PAYMENT UNDER THIS CONTRACT, AN OFFER OF PROMPT PAYMENT DISCOUNT IN EXCESS OF 2 PERCENT SHALL BE CONSIDERED A TRADE OR SPECIAL DISCOUNT WHICH SHALL BE AVAILABLE TO THE GOVERNMENT AS A REDUCTION FROM THE PRICE(S) OFFERED WITHOUT REGARD TO WHETHER THE INVOICES ARE ACTUALLY PAID WITHIN THE DESIGNATED DISCOUNT PERIOD.

(d) Offerors who desire to do so may quote customary terms of discount (not in excess of 2 percent) for prompt payment in addition to any trade or special discount available to the Government, provided such discounts are stated separately in their offers. Unless such trade or special discounts are separately stated, the offeror agrees that, when the discount offered exceeds 2 percent, the entire discount will be considered as a trade or special discount and will not be treated as a discount for prompt payment.

(e) Prompt payment discount will be applied to the total amount of each invoice.

(f) Discounts for prompt payment will not be considered in the evaluation of offers.

(DFSC 52.232-9F01)

17 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printing and writing paper such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(FAR 52.204-4)

18.02 ASSIGNMENT OF CLAIMS (ALT I) (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(FAR 52.232-23/Alt I)

111.03 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3)

fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the DISPUTES clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract. (FAR 52.249-8)

I11.04 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract. (FAR 52.242-13)

I12.01 DISPUTES (OCT 1995)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) **Claim**, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim--

(A) Exceeding \$50,000; or

(B) Regardless of the amount claimed, when using--

(a) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(b) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment

for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(FAR 52.233-1)

112.03 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(FAR 52.233-3)

118 SPECIAL PROHIBITION ON EMPLOYMENT (NOV 1995)**(a) DEFINITIONS.**

As used in this clause--

(1) **Arising out of a contract with the DoD** means any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of

Defense (DoD).

(2) **Conviction of fraud or any other felony** means any conviction for fraud or a felony in violation of state or Federal criminal statutes whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) **Date of Conviction** means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after 29 September 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from--

(1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) Serving on the board of directors of any DoD Contractor or first-tier subcontractor; or

(3) Serving on as a consultant to any DoD Contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone (202) 307-1065.

(DFARS 252.203-7001)

118.03 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to--

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records) and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; PROVIDED, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(FAR 52.222-26)

120 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) (1) **Bona fide agency**, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) **Bona fide employee**, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) **Contingent fee**, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) **Improper influence**, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(FAR 52.203-5)

I24 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(FAR 52.222-1)

I27 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.203-3)

I28.16 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(1) **All applicable Federal, State, and local taxes and duties** as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

(2) **After-imposed Federal tax**, as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

(3) **After-relieved Federal tax**, as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(FAR 52.229-3)

I31.05 LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (DFSC OCT 1984)

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

(c) The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause, "total contract price" in that clause means the amount available for performance of this contract, as in (a) above. "Work under the contract" in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an OPTION or CHANGES clause) shall not constitute the notification contemplated by (a) above.

(DFSC 52.217-9F01)

I32.01 CANCELLATION OF ITEMS (DESC OCT 1984)

(a) **Cancellation**, as used in this clause, means that the Government is canceling its requirements for all items in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule (unless a later date is agreed to) if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the DEFAULT clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.

(c) This contract may include an OPTION clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in the price for option quantities any costs of a startup or nonrecurring nature, that have been fully provided for in the unit prices of the firm quantities of the program years. The Contractor further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit necessary to furnish the additional option quantities.

(DFSC 52.217-9F80)

I33 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

I36 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l) respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(FAR 52.249-2)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(FAR 52.246-25)

172.06 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (DEC 1991)

(a) The Contractor has indicated by the response to the solicitation provision REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this contract, will be transported by sea, the Contractor--

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the TRANSPORTATION OF SUPPLIES BY SEA clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(DFARS 252.247-7024)

194 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which --

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(FAR 52.215-10)

194.01 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(FAR 52.215-11)

195 AUDIT AND RECORDS -- NEGOTIATION (AUG 1996)

(a) As used in this clause, **records** includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) **EXAMINATION OF COSTS.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hours, or price-redeterminable contract, or any combination of these, the Contractor shall maintain, and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performance of this contract.

(c) **COST OR PRICING DATA.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) COMPTROLLER GENERAL.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) **REPORTS.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer, or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) **AVAILABILITY.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(FAR 52.215-2)

196.02 PRICING ADJUSTMENTS (DEC 1991)

The term **pricing adjustment**, as used in paragraph (a) of the PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS, SUBCONTRACTOR COST OR PRICING DATA, and SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS clauses means the aggregate increases and/or decreases in cost plus applicable profits.

(DFARS 252.215-7000)

197 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS.

(FAR 52.215-12)

197.02 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(FAR 52.215-13)

198 PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(FAR 52.209-6)

1100 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) DEFINITIONS.

(1) **Act**, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

(2) **Contractor**, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(3) **Service employee**, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as the terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) **APPLICABILITY.** This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) COMPENSATION.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid in the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classification based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) **Adjustment of Compensation.** If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) **OBLIGATION TO FURNISH FRINGE BENEFITS.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) **MINIMUM WAGE.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) **SUCCESSOR CONTRACTS.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wage and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligations unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contractor was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) **NOTIFICATION TO EMPLOYEES.** The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) **SAFE AND SANITARY WORKING COMDITIONS.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) **RECORDS.**

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) **PAY PERIODS.** The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(k) **WITHHOLDING OF PAYMENTS AND TERMINATION OF CONTRACT.** The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) **SUBCONTRACTS.** The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) **COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO SERVICE EMPLOYEES.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) **SENIORITY LIST.** Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) **RULINGS AND INTERPRETATIONS.** Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) **CONTRACTOR'S CERTIFICATION.**

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statement is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) **VARIATIONS, TOLERANCES, AND EXEMPTIONS INVOLVING EMPLOYMENT.** Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment and apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) **APPRENTICES.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) **TIPS.** An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(n) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) **DISPUTES CONCERNING LABOR STANDARDS.** The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.

(FAR 52.222-41)

I102.05 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

EMPLOYEE CLASS**MONETARY WAGE - FRINGE BENEFITS**

(FAR 52.222-42)

I116 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DFSC APR 1997)

(a) Government-owned petroleum products received, stored, and transported under this contract are governed by the provisions of this clause.

(b) Title to any Government-owned petroleum products in the possession of or under the custody of the Contractor by reason of this contract, which is hereinafter referred to in this clause as "such property," shall at all times remain in the Government, and such property shall be used only for the purposes set forth in this contract. The Government shall at all times have access to the premises wherein any such property is located.

(c) The Contractor shall protect and preserve such property in a manner consistent with sound industrial practice.

(d) At the end of the contract period the Government may abandon any Government-owned petroleum products in place, at which time all obligations of the Government regarding such abandoned petroleum products shall cease. The contract price shall be reduced to reflect the fair market value of any abandoned petroleum products. If an agreement as to compensation for abandoned petroleum products cannot be reached in a timely manner, the Contracting Officer will make a formal determination. The decision will be subject to resolution in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(e) The Contractor shall not be liable for loss of or damage to all such property while in the possession of or under the custody of the Contractor by reason of this contract, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto)--

(1) Which results from negligence, or bad faith, or willful misconduct of the Contractor, its employees, or agents; or

(2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(f) Except for those risks assumed by the Contractor pursuant to subparagraph (e)(1) of this clause, the Contractor represents and warrants that the prices stated in the Schedule do not include the cost of insurance covering risk or loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, nor any provision for a reserve to cover such risk. In the event the Contractor is reimbursed or compensated for any loss or damage to such property, it shall reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(DFSC 52.245-9F04)

I116.01 LIABILITY FOR FUEL SPILLS (DESC OCT 1998)

The Contractor shall take all measures required by law and good business practice to prevent fuel spills (including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or onto any land or water). In the event that the Contractor's failure to take such measures results in a fuel spill, the Contractor shall be liable for the costs of spill containment, cleanup, and disposal. In addition, the Contractor shall reimburse the Government for any resulting fines or penalties. For purposes of this clause, the term **fuel** includes all petroleum and additive products.

(DESC 52.223-9F40)

I119.04 PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997)**(a) INTRODUCTION.**

(1) The Contractor shall prepare all documentation in accordance with the information and instructions provided herein. Documents and procedures are subject to change. The Defense Energy Region (DER) shall notify the Contractor at least 45 days prior to implementation of any change. The Contractor shall maintain property control records of Government-owned product in its possession or in its custody as provided herein. Such property control records shall be subject to audit by the U.S. Government.

(2) The Contractor shall provide the required transaction data shown under paragraph (b)(3) below.

(b) DEFENSE FUEL AUTOMATED MANAGEMENT SYSTEM (DFAMS) REPORTING REQUIREMENTS.

(1) The Contractor shall prepare all necessary documentation for each transaction affecting the inventory of Government-owned products in its possession by virtue of this contract. The Contractor shall transmit one copy of each document prepared to the appropriate DER or Inventory Control Point (ICP) on a daily basis as prescribed by the DER. A transaction sequence number will be shown in ink in the upper right hand corner of the document. The DER or ICP may also telephone the Contractor on a daily basis (Monday through Friday, except holidays) to obtain information concerning transactions processed. The Contractor shall prepare and report each transaction in accordance with guidance provided in DoD 4140.25-M, Volume V, Appendices A, B, and C, as appropriate (copies of the publication will be provided by the Contracting Officer upon request). The cognizant DER or ICP shall advise the Contractor of any changes in processing and reporting procedures.

(2) The Contractor shall prepare and report weekly and monthly (see DoD 4140.25-M, Volume II, Chapter 10, Sections C and K) inventories of Government-owned product in its possession. By the second work day of each month, the Contractor shall furnish the DER by facsimile the physical inventory quantity for each product stored at the facility to be followed up by a hard copy document (DD Form 1348-8) by the fifth of the month.

(3) Under the DFAMS, all transactions are recorded by Document Identifier Code (DIC). The most commonly used codes are explained below. The DER shall provide instructions for any transaction that may be processed but not shown below.

<u>DIC</u>	<u>TRANSACTION</u>	<u>DOCUMENT</u>
<u>SHIPMENTS</u>		
P21	Shipments from a DESP to a Service/Agency	DD Form 250-1 DD Form 1348-7
P22	Shipments between DESPs	DD Form 250-1 DD Form 1348-7
<u>RECEIPTS</u>		
P30	Receipts from a DESC Procurement Contract	DD Form 250/250-1
P31	Service/Agency Receipts from a DESP	DD Form 250-1 DD Form 1348-7
P32	Receipts from a DESP (receipts associated with P22 transactions)	DD Form 250-1 DD Form 1348-7
P39	Receipts from an end-user (with or without credit)	DD Form 250-1 DD Form 1348-7

INVENTORY

P41	Physical Inventory	DD Form 1348-8
P42	Inventory Adjustments	DD Form 1348-8
	<ul style="list-style-type: none"> o Normal handling of variances (excessive) o Determinable losses such as spills, line breaks, nonrecoverable tank bottoms, major disasters, combat losses, etc. 	
P43	Condition/Identity Change	DD Form 1348-8
	<ul style="list-style-type: none"> o Downgrade, regrade, or additive 	

(4) **The Contractor shall prepare inventory adjustment documents (DD Form 1348-8/P42 transactions) when inventory variances (discrepancies) exceed tolerance factors; determinable losses occur such as contaminated fuels, spills, pipeline ruptures, explosions or loss of product samples (five gallons or more) shipped to laboratories. An explanation shall be provided on each inventory adjustment document explaining gain or loss in excess of tolerance.** Each document shall be signed and dated by the Contractor's representative and the Quality Surveillance Representative (QSR). The QSR shall indicate whether he/she concurs or nonconcurs with the statement and shall provide an explanation for any nonoccurrence.

(5) At the end of each month (every six months for static storage), the cognizant DER or ICP shall forward one copy of the Inventory Reconciliation Document Register which lists all transactions processed during the period. The register will contain the following statement and shall be signed and dated by an authorized representative of the Contractor and the Government:

"I certify that the transactions recorded in this document register are complete and accurate. They represent all actions affecting this account during the month (past six months for static storage) in the sequence shown. Each transaction, except a final automatic reconciliation adjustment, is supported by a valid auditable source document."

(6) Within five days after receipt of the Inventory Reconciliation Document Register, the Contractor shall advise the cognizant DER or ICP in writing of any discrepancy and provide a detailed explanation of any gain or loss (P42) transaction in excess of tolerance. Further, the Contractor shall attach all supporting documents to the inventory document register and retain the entire package on file for future audits.

(c) OTHER REQUIREMENTS.

(1) **STORAGE TANK OUT OF SERVICE.** Prior to removing a storage tank from service, the Contractor shall immediately notify the Property Administrator by telephone, with follow-up confirmation in writing, providing the date and time the tank is scheduled to be removed from service. In addition, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(2) **UNRECOVERABLE TANK BOTTOMS.** Prior to the end of the contract period, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(3) **REPORTING FUEL ADDITIVES AND SLOP FUEL.** Government-owned fuel additives and slop fuel stock at the DFSP will be treated as separate and distinct items, and all transactions shall be documented as outlined herein. These products will be recorded in gallons and reported under the approved National Stock Number (NSN).

(a) An auditable identity change document (DD Form 1348-8) shall be used to account for bulk FSII blended with bulk fuel and fuel downgraded to slop. Fractions of a gallon cannot be used (e.g., if 1.5 gallons of FSII were injected, report 1 gallon and record the .5 until a whole gallon is used).

(b) Packaged additives such as COR, ASA, AS1, AD1, and CO1 shall be accounted for locally using a general log or ledger. As the additive is injected, record the amount in the log to track usage and inventory. No other documentation is required.

(4) **GOVERNMENT BILLS OF LADING (GBLs) - CONUS ONLY.** Storage Contractors shall prepare GBLs in accordance with the data and instructions provided in DFSCH 4500.4, Transportation and Traffic Management -Preparation of Government Bills of Lading for Shipment of Defense Fuel Supply Center Fuels (copies of the publication will be provided by the Contracting Officer upon request). The cognizant DER shall advise Contractors of any changes in processing and reporting procedures. Contractors shall contact the cognizant DER when additional guidance is required.

(5) **STATEMENT OF AUTHORIZED SIGNATURES.** The Contractor shall furnish the Property Administrator a statement containing the names and handwritten signatures of persons authorized by the Contractor to receive and accept Government-owned product or property.

(6) **RETENTION OF SUPPORTING DOCUMENTS.** The Contractor shall retain one copy of the ordering activities' requisitions for a period of two years or until the expiration of this contract, whichever is sooner.

(7) **CHANGE IN DFSP OPERATOR.** Transfer of residual inventory from expired contracts will be made regardless of whether there is a change in Contractors. The transfer of DESP product will be accomplished as follows:

- (i) The outgoing Contractor, the new Contractor, and the QSR will jointly gauge all tanks and will calculate the physical inventory.
- (ii) Upon completion of the inventory, a DD Form 1348-8 will be completed for each grade of fuel.
- (iii) The following certification will be typed on each DD Form 1348-8 and signed by the appropriate individuals:

"The inventory recorded on this DD Form 1348-8 has been transferred from contract
(old number) to contract (new number) on (date)."

Signature (Outgoing Contractor) / (New Contractor) "

(iv) The Contractor shall telephone this information into the DER and mail one copy of each DD Form 1348-8 to the DER.

(v) The DER or ICP shall mail three copies of the Inventory Reconciliation Document Register covering the transfer month to the outgoing Contractor. The outgoing Contractor shall apply appropriate certification to the Inventory Reconciliation Document Register and shall retain one copy, provide one copy to the new Contractor, and return the third copy to the DER.

(8) **RETENTION OF ACCOUNTABLE RECORDS AND DOCUMENTS.** All records and documents identified above are DESC-accountable records and must be retained for two years after expiration of the contract.

(DESC 52.245-9F30)

1132.02 ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(FAR 52.215-33)

1171.01-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JAN 1999)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at FAR 52.219-9, SMALL BUSINESS SUBCONTRACTING PLAN. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) **DEFINITIONS.** As used in this clause--

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any **Native** as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a prime Contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the self-certification of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), ATTN: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The five percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract;
- (ii) The target cost of a cost-plus-incentive-fee prime contract;
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract; or
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be five percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and availability of funds, shall authorize an incentive payment of five percent of the amount paid to the subcontractor. The Contracting Officer shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the DISPUTES clause of this contract.

(FAR 52.226-1)

I180.02 ENVIRONMENTAL PROTECTION (STORAGE) (DESC MAY 1987)

The Contractor agrees to conform to all laws and regulations relating to the protection of the environment in effect on the date the contract is awarded, which are applicable to its operation in the performance of this contract. The Contractor further agrees to conform to any laws or regulations enacted after contract award that are applicable to its operation in the performance of this contract. In the event that conformance with any such new laws or regulations causes an increase or decrease in the operating cost, the Contractor and the Government will negotiate an equitable adjustment in the contract price. Failure to agree on an equitable adjustment in the contract price shall be a dispute concerning a question of fact within the meaning of the DISPUTES clause of this contract; however, nothing in this clause shall excuse the Contractor from implementing any such laws or regulations. The Contractor shall proceed with performance of this contract, unless so advised in writing by the Contracting Officer.

(DESC 52.223-9F25)

I185.01 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) **DEFINITIONS.** As used in this clause--

"Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

"United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) **CERTIFICATION.**

By submitting this offer, the offeror, if a foreign person, company or entity, certifies that it--

- (1) Does not comply with the secondary Arab boycott of Israel; and
- (2) Is not taking or knowingly agreeing to take any action, with respect to the secondary boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(DFARS 252.225-7031)

I199 CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding \$100,000 shall bear, at the time of submission, the following certificate given by an individual who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(Official's Name)

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to--

(1) Requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; or

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410e has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act (41 U.S.C. 601 et seq.) but signed by an individual who is authorized to bind the Contractor and who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request, will satisfy the certification requirements of both statutes.

(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs that have already been reimbursed or that have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant criminal and civil penalties and fines.

(DFARS 252.233-7000)

I209.03 EXTENSION PROVISION (STORAGE) (DFSC SEP 1991)

The Government shall have the right to extend this contract upon the same terms and conditions on a month-by-month basis for a total of no more than six months. Notice of extensions may be furnished any time prior to the expiration of this contract or any extensions thereof. The foregoing extensions may be exercised by the Government only if (a) a decision is made by the Government that the additional time is required to deplete the Government-owned stocks stored in the facility, (b) a contract for follow-on services is terminated for default by the Government prior to commencement of services, or (c) where the extension is required to sustain performance because of difficulties encountered in award of the follow-on contract.

(DFSC 52.217-9F05)

I225 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(FAR 52.232-1)

I227.01 OBLIGATION OF FUNDS (MULTIYEAR) (DFSC FEB 1985)

The time within which the Government shall obligate funds pursuant to paragraph (a) of the LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS clause shall be at least 30 days prior to expiration of the first program year requirement or any subsequent renewal thereof.

(DFSC 52.232-9F09)

I251 ANTI-KICKBACK PROCEDURES (JUL 1995)**(a) DEFINITIONS.**

(1) **Kickback**, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) **Person**, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) **Prime Contract**, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) **Prime Contractor**, as used in this clause, means a person who has entered into a prime contract with the United States.

(5) **Prime Contractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) **Subcontract**, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) **Subcontractor**, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) **Subcontractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act) prohibits any person from--

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, monies withheld, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract that exceed \$100,000.

(FAR 52.203-7)

SECTION J – LIST OF ATTACHMENTS

THE DOUMENTS LISTED BELOW ARE HEREBY MADE A PART OF THIS SOLICITATION

<u>FORM</u>	<u>TITLE</u>	<u>LOCATION</u>
DD1707	INFORMATION TO OFFERORS OR QUOTERS	COVER PAGE
SF33	SOLICITATION, OFFER AND AWARD	PAGE 1
	FUEL SAMPLING AND TESTNG REQUIREMENTS	ATTACHMENT 1
	OFFEROR SUBMISSION PACKAGE	ATTACHMENT 2

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS**K1.01-5 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)**

The offeror represents that--

(a) It--

☐ has

☐ has not--

participated in a previous contract or subcontract subject to the EQUAL OPPORTUNITY clause of this solicitation;

(b) It--

☐ has

☐ has not--

filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(FAR 52.222-22)

K1.01-6 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

THE FAR REPRESENTATION IN THE FOLLOWING PARAGRAPH SHALL BE COMPLETED BY EACH OFFEROR WHOSE OFFER IS \$50,000 OR MORE AND WHO HAS 50 OR MORE EMPLOYEES.

This representation--

☐ DOES APPLY.

☐ DOES NOT APPLY.

The offeror represents that--

(a) It--

☐ has developed and has on file

☐ has not developed and does not have on file--

at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It--

☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(FAR 52.222-25)

K1.01-11 SMALL BUSINESS PROGRAM REPRESENTATIONS (ALTS I/II) (OCT 1998/OCT 1998/JAN 1999)

- (a) (1) The standard industrial classification (SIC) code for this acquisition is _____.
- (2) The small business size standard is _____.
- (3) The small business size standard for a concern that submits an offer in its own name, other than on a construction or service contract, but that proposes to furnish a product that it did not itself manufacture, is 500 employees.

(b) REPRESENTATIONS.

- (1) The offeror represents as part of its offer that it--

☐ is,
☐ is not

a small business concern.

(2) **(Complete only if offeror represented itself as a small business concern in subparagraph (b)(1) of this provision.)** The offeror represents, for general statistical purposes, that it--

☐ is,
☐ is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents as part of its offer that it--

☐ is,
☐ is not

a women-owned small business concern.

(4) **(Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(7) of this provision.)** The offeror shall check the category in which its ownership falls:

- ☐ Black American
- ☐ Hispanic American
- ☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- ☐ Asian Pacific American (persons with origin from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- ☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- ☐ Individual/concern, other than one of the preceding.

(5) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents, as part of its offer, that--

- (i) It--

☐ is

[] is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It--

[] is

[] is not

a joint venture that complied with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. **(The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:)**

_____	_____
_____	_____
_____	_____

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) DEFINITIONS.

(1) **Small business concern**, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

(2) **Woman-owned small business concern** as used in this provision, means a small business concern--

(i) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) NOTICE.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of a fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(FAR 52.219-1/Alts I/II)

K1.06 CONTRACTOR IDENTIFICATION NUMBER – DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996)

(a) **Contractor Identification Number**, as used in this provision, means **Data Universal Numbering System (DUNS) number**, which is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation “**DUNS**” followed by the DUNS number which identifies the offeror’s name and address exactly as stated in the offer.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information.

(1) Company name

(2) Company address.

- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(d) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.dbisna.com/dbis/customer/custlist.htm>. If an offeror is unable to locate a local service center, it may send an email to Dun and Bradstreet at globalinfor@dbisma.com.

(FAR 52.204-6)

K10.01 CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that--

- (a) Any facility to be used in the performance of this proposed contract is [], is not [] listed on the Environmental Protection Agency List of Violating Facilities;
- (b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(FAR 52.223-1)

K15.03 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that--

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
 - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory--
- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above
 _____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];
 - (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
 - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(FAR 52.203-2)

K33.01 AUTHORIZED NEGOTIATORS (DFSC JAN 1998)

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

K41 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) **DEFINITION. Women-owned business concern** as used in this provision, means a concern that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) **REPRESENTATION.** (Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, SMALL BUSINESS PROGRAM REPRESENTATIONS, of this solicitation.) The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(FAR 52.204-5)

K45 FACSIMILE INVOICING (DFSC SEP 1988)

(a) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.

(b) Offeror shall indicate whether or not he intends to submit invoices via FAX:

☐ YES ☐ NO

(c) See the SUBMISSION OF INVOICES BY FACSIMILE clause for FAX invoicing procedures.

K45.01 FACSIMILE OR ELECTRONIC INVOICING (DESC JAN 1998)

(a) **FACSIMILE INVOICING.**

(1) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.

(2) Offeror shall indicate whether or not he intends to submit invoices via FAX:

☐ YES ☐ NO

(3) See the SUBMISSION OF INVOICES FOR PAYMENT clause for FAX invoicing procedures.

(4) **RETURN OF INVOICES BY THE PAYING OFFICE.**

(i) Invoices deemed improper in accordance with the Prompt Payment Act may be returned to the offeror via FAX with the reason for return.

(ii) The offeror's FAX number for returning improper invoices is--

(For overseas locations, include the country code)

(b) **ELECTRONIC INVOICING (EDI)**

(1) Electronic submission of invoices via Electronic Data Interchange (EDI) for all applicable items (as defined in the SUBMISSION OF INVOICES FOR PAYMENT clause) is authorized when the offeror will utilize this method of invoicing at all times for those affected items.

(2) The offeror shall indicate whether it intends to submit electronic invoices via EDI.

☐ YES ☐ NO

(3) See the SUBMISSION OF INVOICES FOR PAYMENT for electronic invoicing procedures.

(DESC 52.232-9F20)

K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (SEP 1994)**(a) DEFINITIONS.** As used in this provision--

(1) **Government of a terrorist country** includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) **Terrorist country** means a country determined by the Secretary of State, under Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) Significant interest, as used in this provision means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) PROHIBITION ON AWARD. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) DISCLOSURE.

If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose such interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. The disclosure shall include--

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each Government.

(DFARS 252.209-7001)

K88 TAXPAYER IDENTIFICATION (MAR 1994)**(a) DEFINITIONS.**

Common parent, as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Corporate Status, as used in this solicitation provision, means a designation as to whether the contractor is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

Taxpayer Identification Number (TIN), as used in this solicitation provision, means the same number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) TAXPAYER IDENTIFICATION NUMBER (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State Basis.

(d) CORPORATE STATUS.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity.

☐ Not a corporate entity.

- ☐ Sole Proprietorship.
☐ Partnership
☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26

CFR 501(a).

(e) **COMMON PARENT.**

- ☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
☐ Name and TIN of common parent:

Name: _____

TIN: _____

(FAR 52.204-3)

K93 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this solicitation.

(b) **REPRESENTATIONS.**

The offeror represents that it--

☐ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

☐ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the TRANSPORTATION OF SUPPLIES BY SEA clause. If the offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA.

(DFARS 252.247-7022)

K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(a) (1) The offeror certifies, to the best of its knowledge and belief, that--

(i) The offeror and/or any of its principals--

(A) Are ☐, are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐, are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The offeror has ☐, has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default. (FAR 52.209-5)

K96 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. (FAR 52.203-11)

SECTION L – INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR QUOTERS**L1 STATEMENT AS TO AWARD (SERVICES) (DFSC NOV 1990)**

Award will not be made on less than the service stated as the first program year requirements. (Program year is the first year of the contract beginning with the service start date.)

L1.02 PROPOSAL ACCEPTANCE PERIOD (DFSC NOV 1991)

(a) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of 60 calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected. by MFR dated 1 Apr 96.

L2.01 INSTRUCTIONS TO OFFERORS (RFP) (DFSC OCT 1981)

Offerors are expected to examine all sections of the solicitation and the Information to Offerors form. Failure to do so will be at offeror's risk. Each offeror shall furnish the information required by the solicitation. Offers and modifications thereto shall be signed and dated. The name and title of the person authorized to sign the offer is to be printed or typed on the offer. The offer shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. Erasures or other changes must be initialed by the person signing the offer. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

(DFSC 52.215-9F23)

L2.02 TELEGRAPHIC OFFERS (DFSC DEC 1989)

(a) Telegraphic offers may be submitted in response to this solicitation. Offers must be received at the office designated in the solicitation prior to the time and date specified for closing if this is a negotiated acquisition, or the time and date specified for receipt of bids if this is a sealed bid acquisition. Such offers must specifically reference this solicitation; must include the item or subitems, quantities, and unit prices for which the offer is submitted, and the time and place of delivery; and must contain a statement that the offeror agrees to all the terms, conditions, and provisions of the solicitation. A telegraphic offer in response to a sealed bid must contain all the representations and other information required by the sealed bid. Failure to furnish, in the telegraphic offer, the information required by the sealed bid may necessitate rejection of the bid. Telegraphic offers for RFPs must be confirmed by proper submission of the solicitation document within 10 days.

(b) All wire offers transmitted directly to the Defense Fuel Supply Center (DFSC) by teletypewriter (TWX) must be received in DFSC no later than the exact time and date set for receipt of offers if this is a negotiated acquisition, or the time and date specified for receipt of bids if this is a sealed bid acquisition. Any offer, modification, or withdrawal of offer submitted by this means that is not completely received by the required time and date shall be treated as late, in accordance with the provisions of the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS or LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS clause, as applicable, even if delay in receipt is caused by malfunction of the DFSC equipment or the volume of transmission traffic. The offeror is responsible for the accuracy and completeness of information transmitted.

(c) When offers are submitted by teletypewriter (TWX), the sender must (1) identify the date and time when transmission commenced; (2) indicate the time transmission was concluded; and (3) request and receive acknowledgement of date and time transmission was completed if transmitted during regular DFSC work hours, 8:00 a.m. to 4:00 p.m., Monday through Friday (except on an authorized holiday). All transmissions received subsequent to 4:00 p.m. will indicate the date and time of transmission by the sender and will be processed as of the next workday, which will be the official time for consideration of timeliness of submission.

(d) If a timely, responsive offer has been properly submitted by returning the solicitation document, telegraphic offers are authorized for those items/line items for which no offer was made in the solicitation document provided such telegraphic offer is received prior to the time and date specified for closing if this is a negotiated acquisition, or the time and date specified for receipt of bids if this is a sealed bid acquisition. Consideration of such telegraphic offer will be governed by the provisions of the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS or LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS clause, as applicable.

(e) The term "telegraphic offer," as used in this provision, includes mailgrams.

(f) Facsimile offers, modifications, or withdrawals will not be considered unless authorized by the solicitation.

(DFSC 52.215-9F34)

L2.11-1 FACSIMILE OFFERS (DFSC AUG 1996)

(a) **DEFINITION. Facsimile offer**, as used in this solicitation, means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile offers as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile offers that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile offers must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile offer. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete, original, signed offer, or a hard copy thereof, to be received within 10 days of the opening/closing date.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: (703) 767-8506.

(2) The Defense Energy Support Center's receiving equipment is a Xerox Telecopier 7033. The receiving speed coincides with the applicable sending machine. Each FAX is required to include the following information on a cover sheet or at the top of the first page:

TO: (Name and office code, i.e., Tom Tracy, DESC-FP)

FROM: (Originator's name, complete company name and address)

Verification number: (Originator phone number and FAX number)

Description: (Solicitation number)

Number of pages:

(g) If the offeror chooses to transmit a facsimile offer, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer including, but not limited to, the following:

- (1) Receipt of garbled or incomplete offer.
- (2) Availability or condition of the receiving facsimile equipment.
- (3) Incompatibility between the sending and receiving equipment.
- (4) Delay in transmission or receipt of offer.
- (5) Failure of the offeror to properly identify the offer.
- (6) Illegibility of offer.
- (7) Security of offer data.

L2.11-2 FACSIMILE PROPOSALS (OCT 1997)

(a) **DEFINITION. Facsimile proposal**, as used in this provision, means a proposal, revision, or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is (703) 767-8506.

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

- (1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;
- (2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(FAR 52.215-5)

L2.21 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any DOD FAR Supplement Regulation (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(FAR 52.252-5)

L2.23 AMENDMENTS TO SOLICITATIONS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendment to this solicitation by (1) signing and returning the amendment, (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer, (3) letter or telegram, or (4) facsimile, if facsimile offers are authorized in the solicitation. The Government must receive the acknowledgment by the time specified for receipt of offers.

(FAR 52.215-8)

L5 SERVICE OF PROTEST (AUG 1996)

(a) **Protests**, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from--

ATTN: **DESC-PCA**
 DEFENSE ENERGY SUPPORT CENTER
 8725 JOHN J. KINGMAN ROAD SUITE 4950
 FORT BELVOIR VA 22060-6222

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with GAO.

(FAR 52.233-2)

L5.01 AGENCY PROTESTS (DFSC AUG 1997) - DLAD

(a) Parties protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order 12979, with the DFSC Commodity Business Unit Director.

(b) Protests filed with the Director, DFSC Commodity Business Unit, pursuant to Executive Order 12979 should be addressed to the Contracting Officer, but should clearly state that they are an "Agency Level Protest under Executive Order 12979." The Contracting Officer will forward the protest to the DFSC Director of the appropriate commodity business unit for a decision. (This process allows for a higher level decision on the initial protest, it is not a review of a Contracting Officer's decision on a protest filed with the Contracting Officer.)

(c) Absent a clear indication of the intent to file an agency level protest under Executive Order 12979, protests will be presumed to be protests to the Contracting Officer.

(d) To the maximum extent possible, all parties shall use their best efforts to resolve concerns at the Contracting Officer level through frank and open discussions.

(DLAD 52.233-9000, revised)

L11 POSTPONEMENT OF OPENING/CLOSING OF OFFERS (OCT 1982) DLAD

If the opening/closing of offers is postponed because emergency or unanticipated events (such as, but not limited to, flood, fire, accident, weather condition, or strikes) result in closing the designated site for opening/closing of offers, so that the conduct of openings/closings as scheduled is impracticable, offers or modifications or withdrawal of offers received prior to the time of actual opening/closing will be considered as timely. Offers or modifications or withdrawals of offers received after the time of actual opening/closing of offers, when opening/closing of offers was postponed as provided above, will not be considered except as provided in FAR 52.214-7 or 52.215-10, as applicable. (DLAD 52.214-9000)

L17 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) (MAR 1994)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. A telephone order entry system is available with the use of a touch tone telephone. A Customer Number is required to use this system and may be obtained by written request to the address listed below or by telephone (215-697-2179). In case of urgency, telegraphic requests are acceptable. Voluntary standards, which are not available to offerors, and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Standardization Document Order Desk
Order Desk, Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094

Facsimile No. (215) 697-2978.

Telephone Order Entry System (TOES) Numbers (215) 697-1187 through and including (215) 697-1197

(FAR 52.211-2)

L17.02 QUALITY CONTROL PLAN (DFSC AUG 1991)

(a) The offeror shall prepare and submit a Quality Control Plan (QCP), in English and in duplicate, to the Contracting Officer with the initial proposal. The QCP shall include the following quality control procedures employed by the Contractor: (1) Receiving (both product and additives), (2) blending, (3) sampling, (4) testing, (5) storage and handling, (6) loading and shipping, (7) calibration of measuring and test equipment (IAW MIL-STD-978 latest revision), (8) quantity measurement, (9) records and reports, and (10) corrective actions (to include, but not be limited to, procedures for notification of Quality Representative; actions to be taken on discovery of off-spec product during receipts/shipments; upgrading procedures for Contractor-caused contamination; leaks; etc.). The plan shall also include an organizational chart of key personnel and their responsibilities and a schematic diagram of the facility with key inspection/activity points marked for each product handled.

(b) The QCP shall require that each Contractor employee be familiar with its content and shall state that it must be reviewed semiannually and revised as needed.

L65.04 COST OR PRICING DATA (DFSC APR 1996)

(a) If the total dollar value of the proposal exceeds \$500,000 and the offeror does not fall within one of the exceptions listed in Federal Acquisition Regulation (FAR) 15.804-1, as determined by the Contracting Officer, cost and pricing data must be submitted on attached SF 1411, Contract Pricing Proposal Cover Sheet, pursuant to Public Law 87-653. In this instance, offerors will be required to submit a Certificate of Current Cost or Pricing Data at the conclusion of negotiations. In addition, submission of Form CASB-CMF, Facilities Capital Cost of Money Factors Computation, attached, is requested. This information will be used to establish a profit objective in accordance with FAR 15.905. Offerors may address questions to the Contracting Officer.

(b) If the total dollar value of the proposal exceeds \$500,000 and the offeror does fall within one of the exemptions listed in FAR 15.804-1, as determined by the Contracting Officer, the offeror must submit the information required by the Contracting Officer for each product offered at each location for which an offer is made.

(DFSC 52.215-9F26)

L66 RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall--

(a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the

Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets _____ and _____; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."
(FAR 52.215-12)

L74 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Fixed Price contract resulting from this solicitation.

(FAR 52.216-1)

L82 WAGE DETERMINATION (DESC JAN 1986)

This procurement is subject to Wage Determination Number _____ dated _____ as determined by the Administrator, Wage and Hour Public Contracts Division, U.S. Department of Labor. Register of Wage Determination and Fringe Benefits under the McNamara-O'Hara Service Contract Act is attached and made a part of this solicitation.

(DESC 52.222-9F10)

L87.06 CONDITIONS FOR MULTIYEAR OFFERS (DFSC FEB 1995)

(a) Offerors must submit a price for the total multiyear requirements. Offers for less than the multiyear requirements will not be considered for award, except for items specifically designated as one-year requirements.

(b) An offer price on a multiyear line item shall apply to the entire period of the multiyear requirement.

(c) Price changes will be made in accordance with economic price adjustment provisions in the contract.

(d) Award will not be made for less than the multiyear requirements, except for those items designated as one-year requirements.

(DFSC 52.207-9F03)

L116.01 DATA REQUIRED (STORAGE) (DFSC SEP 1994)

(a) Each proposal shall be accompanied by a map (a city street map is satisfactory) showing the exact location of the facility, a schematic drawing showing the facility layout and its relation to other facilities in the area, a description of equipment to be provided, line systems, pump capacities, and other data.

(b) Offeror must verify that certified strapping charts are available for each tank offered and that such charts will be provided upon request.

(c) Offerors are requested to provide, in barrels, the tank bottom for each tank, the pipeline and manifold fill for the facilities offered, and the capacity of the facilities available for receiving ballast water. Offerors are required to provide the maximum safe fill capacity for each tank offered, including a summary of how the maximum safe fill capacity computation was calculated.

(d) If the proposal is based on providing a common system isolated in accordance with the SERVICES TO BE FURNISHED clause, including a single-product system that is not for exclusive use of DFSC-owned product, in lieu of the preferred dedicated system, offerors must submit a general description of such system including detailed handling procedures that shall be followed to ensure the quality of U.S. Government-owned product. The detailed procedures must include as a minimum (1) the types and grades of all other products moved through any part of the offered isolated system, including a list of the products' specifications, and (2) detailed procedures on how non-Government line fills are to be handled prior to receipt/shipment of Government product, i.e., flush and drain line, etc.

(DFSC 52.204-9F02)

L201.02 INSTRUCTIONS TO OFFERORS (COCO) (DESC MAY 1997)

Offeror shall submit an original and one copy of their proposals, divided into the following sections labeled **Offeror Submission Package** and **Past Performance**:

(a) **Offeror Submission Package.**

(1) Complete all required representations and certifications, and provide proposed prices in the SERVICES TO BE FURNISHED AND PRICES clause.

(2) If any exceptions are to be taken to the terms and conditions of the solicitation, indicate (on a separate sheet) the specific paragraph and submit as part of this Offeror Submission Package. Only exceptions detailed here will be considered exceptions to the requirements of the solicitation.

(b) **Past Performance.**

(1) The offeror shall list all contracts and subcontracts completed in the last three years and those in progress that are related to the proposed contract. These contracts may include efforts undertaken on behalf of private industry, quasi-government

organizations, or Federal agencies, including those performed for non-DoD activities. The offeror should include the following information:

- (i) Name and address of contracting activity;
- (ii) Contract number;
- (iii) Contract type and dollar value;
- (iv) Brief description of the work (if the offeror is a large business, include a description of any subcontracting);
- (v) Contracting Officer, Contracting Officer's Representative; Administrative Contracting Officer, and Program Manager (all that are applicable) with telephone numbers; and
- (vi) Significant problem(s) encountered and the corrective action(s) taken.

(DESC 52.215-9F35)

L203 HANDCARRIED OFFERS AND EXPRESS DELIVERY SERVICE (DFSC MAR 1996)

(a) Any handcarried offer must be received at the depository indicated on the Standard Form (SF) 33 or SF 1449 of this solicitation by the date and time specified for receipt of offers. Evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the solicitation wrapper or other documentary evidence of receipt maintained by the installation.

(b) Offers delivered by an express delivery service will be considered "handcarried." Therefore, bidders/offerors that respond to this solicitation using an express delivery service must ensure that the express delivery service "handcarries" the offer to the depository indicated on the SF 33 or SF 1449.

(c) The term **express delivery service** does not include Express Mail delivered by the United States Postal Service. Express Mail will be considered "mail" under the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS; or LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS provisions.

(DFSC 52.252-9F01)

L205 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC 1991)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code must be for that name and address. Enter CAGE before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Services Center (DLSC). The Contracting Officer will--

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(DFARS 252.204-7001)

SECTION M – EVALUATION FACTORS FOR AWARD

M2.13 EVALUATION OF OFFERS (MULTIYEAR COCO STORAGE) (DESC FEB 2000)

(a) All offers will be evaluated on price and past performance. These two factors are equal in importance. Award will be made to the offeror who represents the best value combination of price and past performance.

(b) **PRICE.** The low multiyear offer will be determined by computing the total cost to the Government for five years of service. This will be accomplished by adding—

(1) The monthly service charge offered in Line Item 1001 of the Schedule multiplied by 60;

(c) **PAST PERFORMANCE.**

(1) The Government will evaluate the offeror's past performance. In doing this, the Government may consider information in the offeror's proposal and information obtained from other sources, including past and present customers and their employees, subcontractors, and any others who may have useful information. Offerors lacking relevant past performance history shall receive a neutral evaluation for past performance.

(2) A record of acceptable past performance will not result in a favorable assessment of an otherwise unacceptable proposal.

(3) Proposals may be rated differently within each category, i.e., two proposals may receive an exceptional rating, but one may be more exceptional than the other.

***This five year estimated excess throughput quantity will be used for evaluation purposes only.**

M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DFSC APR 1997)

(a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.

(b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either--

(1) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or

(2) The exception/deviation is acceptable.

(c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).

(d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.

(e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

NOTE: ANY REFERENCES TO THE DEFENSE FUEL SUPPLY CENTER (DFSC) ARE HEREBY DELETED IN THEIR ENTIRETY AND REPLACED WITH DEFENSE ENERGY SUPPORT CENTER (DESC)